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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AM50

Prevailing Rate Systems; Redefinition of the Austin, TX and Waco, TX, Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing a final rule to redefine the geographic boundaries of the Austin, TX, and Waco, TX, appropriated fund Federal Wage System (FWS) wage areas. The final rule redefines Burleson and Lampasas Counties, TX, from the Austin wage area to the Waco wage area. These changes are based on recent consensus recommendations of the Federal Prevailing Rate Advisory Committee to best match the counties proposed for redefinition to a nearby FWS survey area. This final rule makes an additional correction to add the entire Syracuse-Utica-Rome, NY, wage area to Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas, which was inadvertently deleted when the CFR was published in January 2004.

DATES: This regulation is effective on May 2, 2012.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; email *pay-performance-policy@opm.gov;* or Fax: (202) 606–4264.

SUPPLEMENTARY INFORMATION: On November 14, 2011, the U.S. Office of Personnel Management (OPM) issued a proposed rule (76 FR 70365) to redefine Burleson and Lampasas Counties, TX, from the Austin wage area to the Waco wage area. These changes are based on recent consensus recommendations of the Federal Prevailing Rate Advisory Committee (FPRAC) to best match the above counties to a nearby FWS survey area. FPRAC did not recommend other changes for the Austin and Waco wage areas at this time. In addition, this final rule adds the entire Syracuse-Utica-Rome, NY, FWS wage area to Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas. The Syracuse-Utica-Rome wage area was inadvertently deleted when the CFR was published in January 2004. This correction does not affect the pay of any FWS employees. The proposed rule had a 30-day comment period during which OPM received no comments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, the U.S. Office of Personnel Management amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Appendix C to subpart B is amended for the State of New York by adding ''Syracuse-Utica-Rome'' and its constituent counties after ''Rochester'' and revising for the State of Texas the wage area listings of the Austin, TX, and Waco, TX, wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

NEW YORK

* * * * *

Syracuse-Utica-Rome

Survey Area

New York:
- Herkimer
- Madison
- Oneida
- Onondaga
- Oswego

* * * * *

Area of Application. Survey area plus:

New York:
- Broome
- Cayuga
- Chenango
- Cortland
- Hamilton
- Otsego
- Tioga
- Tompkins

* * * * *

TEXAS

Austin

Survey Area

Texas:
- Hays
- Milam
- Travis
- Williamson

Area of Application. Survey area plus:

Texas:
- Bastrop
- Blanco
- Burnet
- Caldwell
- Fayette
- Lee
- Llano
- Mason
- San Saba

* * * * *

Waco

Survey Area

Texas:
- Bell
- Coryell
- McLennan

Area of Application. Survey area plus:

Texas:
- Anderson
- Bosque
- Brazos
- Burleson
- Falls
- Freestone
- Hamilton
- Hill
- Lampasas
- Leon
- Limestone

Mills
Robertson

* * * * *

[FR Doc. 2012–7728 Filed 3–30–12; 8:45 am]
BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

48 CFR Parts 1602, 1615, 1632, and 1652

RIN 3206–AM39

Federal Employees Health Benefits Program: New Premium Rating Method for Most Community Rated Plans

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a final regulation amending the Federal Employees Health Benefits (FEHB) regulations and also the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). This final regulation makes minor changes to an interim final regulation on the same subject published June 29, 2011. The rule replaces the procedure by which premiums for community rated FEHB carriers are compared with the rates charged to a carrier's similarly sized subscriber groups (SSSGs). The new procedure utilizes a medical loss ratio (MLR) threshold, analogous to that defined in both the Affordable Care Act (ACA), and in Department of Health and Human Services (HHS) regulations and replaces the outdated SSSG methodology with a more modern and transparent calculation while still ensuring that the FEHB Program is receiving a fair rate. This will result in a more streamlined process for plans and increased competition and plan choice for enrollees. The new process will apply to all community rated plans, except those required by their state to use traditional community rating (TCR). This new process will be phased in over two years, with optional participation for non-TCR plans in the first year.

DATES: This final rule is effective May 2, 2012.

FOR FURTHER INFORMATION CONTACT: Louise Dyer, Senior Policy Analyst, (202) 606–0770.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management is issuing a final regulation to establish a new rate-setting procedure for most FEHB plans that are subject to community rating. This final rule makes minor changes to an interim final rule published June 29, 2011 that replaced the current rate negotiation process with a requirement that most community rated plans meet an FEHB-specific medical loss ratio (MLR) target. Plans that are required to use traditional community rating (TCR) per their state regulator will be exempt from this new rate-setting procedure. This final rule makes several changes to the interim final rule published June 29, 2011. First, OPM has removed a clause that said that the previous year's MLR would have no effect on the current plan year. The change was added in response to public comments and is intended to give OPM appropriate flexibility to determine a fair and accurate MLR for each plan in each year. Second, OPM has laid out a deadline for publishing the FEHB-specific MLR threshold. Third, OPM made technical changes to a certificate attesting to accurate pricing in order to accommodate a change in timing. Fourth, clarifying language explains that OPM will substitute its own credibility adjustment for that defined by HHS.

Analysis of and Responses to Public Comments

We received two comment letters on the interim final rule from FEHB carriers and carrier groups. The comments and OPM's responses are detailed below.

Comment: A commenter noted that FEHB carriers will need as much advance notice of the MLR threshold for the following year as possible. This commenter recommended early notice by OPM, even in advance of the annual Call Letter, to allow carriers to plan for rating actions and complete filings.

Response: For the first years of MLR-based rate negotiation, OPM will be gathering information about FEHB carrier MLRs which will aid in setting future MLR thresholds. OPM will make every effort to provide such advance notice as the rate negotiation methodology matures. This final regulation text states that OPM will make the MLR threshold public no later than twelve calendar months before plan years beginning with 2014.

Comment: A commenter raised the need for clarity and consistency regarding the identification and allocation of costs and revenues for the MLR calculation. Specifically, the commenter asked for additional clarification on what can be included as expenses, such as fees and charges related to Affordable Care Act implementation.

Response: As stated in the interim final regulation, OPM will adopt the HHS definition of MLR for purposes of MLR-based rate negotiation in FEHB. We anticipate that any clarifications around this calculation that are offered by HHS will be adopted by OPM. OPM will only allow costs for items that are allowed by the FEHB contract to be included in the MLR calculation.

Comment: Both commenters raised concerns about the subsidization penalty reserve account. One commenter stated that using penalty funds to subsidize other plans is inconsistent with both the current similarly sized subscriber group (SSSG) methodology and the ACA MLR rebates. Another commenter stated that OPM needs to be sure that this reserve does not act as a disincentive for carriers to operate in the most efficient way possible.

Response: OPM has intentionally structured the subsidization penalty differently from either the SSSG adjustments or the ACA MLR rebates. The subsidization penalties are to be shared among community rated plans in order to avoid a plan paying a penalty into an account from which it can solely benefit.

In response to the concern about the subsidization penalty reserve acting as a disincentive to efficiency, OPM feels the penalty will encourage plans to offer a fair rate at the time of proposal and therefore will not act as a disincentive to efficiency.

Comment: Both commenters expressed concern about OPM's plan to calculate MLR using one year of data, as compared to a three year average for the HHS calculation. The commenters were concerned about large FEHB plans having to manage between the two methodologies. One commenter mentioned that an annual MLR calculation would not allow FEHB plans to mitigate variation when carriers engage in activities that entail large one-time start up costs.

Response: Regarding the commenters concern about managing two methodologies, OPM feels applying an MLR calculation similar to the ACA required calculation, instead of the SSSG methodology, provides more consistency than there would have been without this regulatory change.

OPM must balance its goal of negotiating the best rate for FEHB payers every year with the concerns of FEHB carriers about managing variation. For example, OPM may consider the MLR for one or more previous years when calculating the current year's MLR. This allows OPM the flexibility to prevent carriers who have historically offered favorable rates from being overly penalized for an unusually low MLR in

a given year. OPM issues its annual rate instructions to plans well in advance of contract negotiations which would contain any variations required to address such concerns.

Comment: A commenter stated the need for advance knowledge and understanding of the criteria that will be applied during the annual reconciliation audit. Specifically, the commenter asked to better understand the factors that will be considered and the potential outcomes of the reconciliation process itself once applied. Additionally, the commenter would like to understand the roles of OPM and the OPM Inspector General in audit oversight.

Response: OPM does not have plans to change any element of the audit process as a result of this regulation. As such, OPM will not add any information about the audit process to this regulation.

Comment: A commenter raised a concern about how the ACA MLR rebates will be treated in calculating the FEHB MLR. Specifically, the commenter wanted to be sure that disregarding the ACA MLR payments from the FEHB MLR calculation will not result in inappropriate duplicative payments and suggested that the methodology be revised to include any ACA rebate in the numerator along with medical costs.

Response: The ACA rebate for a carrier reflects a three year average MLR for their entire book of business and is not specific to the FEHB. OPM wants the FEHB MLR to be representative of only FEHB experience. Its purpose is to ensure the FEHB is receiving a fair rate each year. Including data that is not specific to FEHB claims experience and premiums would diminish OPM's ability to do this. Duplicative payments should not result because any amounts paid to the subsidization penalty reserve should be captured in the following year's ACA MLR calculation.

Comment: A commenter recommended that OPM permit plans to aggregate premiums by parent company when calculating the MLR to mitigate wide variation in MLRs among a parent company's plan offerings.

Response: The regulation allows for this recommendation through the rate instructions if OPM deems it to be appropriate. We do not expect to allow for aggregation within the first few years of implementing MLR, but will consider this option as the MLR experience matures.

Comment: One commenter expressed concern about OPM's plan to use a different form than HHS for submitting MLR information. The commenter is concerned about the administrative burden of the two forms and recommends that OPM follow the model of the HHS form and make it public before the end of 2011.

Response: Because formula for calculating the MLR required in this context is the same as that outlined in 45 CFR part 158, OPM intends to model its form closely on the HHS form.

Comment: One commenter recommended that OPM implement a credibility adjustment for small or new plans for the MLR calculation in the 2012 pilot year.

Response: OPM agrees that such an adjustment is appropriate once the new methodology is fully implemented in 2013 and beyond. OPM does not plan to use such an adjustment in the 2012 pilot year since plans requiring an adjustment can choose not to use the new methodology. OPM intends to adjust the calculation for small or new plans for years 2013 and beyond.

Comment: A commenter recommended that OPM issue guidance for those plans that choose to participate in the 2012 MLR pilot. Specifically, the commenter would like guidance confirming that the FEHB MLR calculation will follow the HHS methodology in treatment of Federal income taxes, not-for-profit community benefits, and assessments on health insurers to support medical centers.

Response: OPM has been speaking with FEHB carriers participating in the 2012 MLR pilot about their specific concerns and has offered some guidance in that context. OPM will continue conversations with FEHB carriers as needed. OPM intends to be consistent with the HHS methodology unless doing so conflicts with the FEHB contract.

Changes Made Since the Interim Final Rule Was Published

The interim final regulation on this subject published June 29, 2011 (76 FR 38282). In § 1602.170–14(b), the first sentence of the interim final rule read ''The FEHB-specific MLR will be calculated on an annual basis with the prior year's ratio having no effect on the current plan year.'' In this final rule, OPM removed the clause ''with the prior year's ratio having no effect on the current plan year'' since OPM may use an adjustment taking previous year's experience into account.

Also in § 1602.170–14(b), this final rule states that OPM will put forth the FEHB-specific MLR threshold no later than 12 calendar months before the beginning of plan years beginning with 2014. The final rule states that OPM will publish the 2013 threshold no later than 8 months before the beginning of that plan year. In § 1602.170–14(c), this final rule explains that OPM will set a credibility adjustment in place of the one defined by HHS at 45 CFR 158.230–158.232.

In the interim final rule, the supplementary information included a sentence stating that ''To complete the FEHB-specific MLR threshold calculation after the carrier calculated the ACA-required MLR, FEHB carriers will report claims incurred in the plan year and paid through March 31 of the following year.'' OPM has determined that a longer period of claims data would create a more stable calculation for carriers and therefore OPM will request through rate instructions that carriers submit claims through June 30 of the following year. To accommodate the change in timing, carriers using the MLR methodology will have to submit a ''Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers'' followed by a ''Certificate of Accurate MLR Calculation'' at a later date. In the interim final rule there was only one certificate for all carriers. The new certificate language is in § 1615.406–2.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and Executive Order 13563, which directs 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). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. This rule is not considered a major rule because OPM estimates that premiums paid by Federal employees and agencies will be very similar under the old and new payment methodologies. This rule will be cost-neutral. OPM's intention is to keep FEHB premiums stable and sustainable using this more transparent methodology.

List of Subjects

5 CFR Part 890

Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

48 CFR Parts 1602, 1615, 1632, and 1652

Government employees, Government procurement, Health insurance,

Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

John Berry,

Director.

For the reasons set forth in the preamble, OPM is adopting the interim rule published June 29, 2011, at 76 FR 38282 as final with the following changes:

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation

Subchapter A—General

PART 1602—DEFINITIONS OF WORDS AND TERMS

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

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 2. Revise § 1602.170–14 to read as follows:

§ 1602.170–14 FEHB-specific medical loss ratio threshold calculation.

(a) *Medical Loss Ratio* (MLR) means the ratio of plan incurred claims, including the issuer's expenditures for activities that improve health care quality, to total premium revenue determined by OPM, as defined by the Department of Health and Human Services in 45 CFR part 158.

(b) The FEHB-specific MLR will be calculated on an annual basis. This FEHB-specific MLR will be measured against an FEHB-specific MLR threshold to be put forth by OPM no later than 12 calendar months before the beginning of plan years 2014 and beyond. OPM will publish the FEHB-specific MLR threshold no later than 8 months before the beginning of plan year 2013.

(c) In place of the credibility adjustment at 45 CFR 158.230–158.232, OPM will set a separate credibility adjustment to account for the special circumstances of small FEHB plans in annual rate instructions to carriers.

Subchapter C—Contracting Methods and Contract Types

PART 1615—CONTRACTING BY NEGOTIATION

■ 3. The authority citations for part 1615 continue to read as follows:

Authority: Audit and records—5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301. Negotiation—5 U.S.C. 8902.

■ 4. In § 1615.402, revise paragraph (c)(3)(ii)(A) to read as follows:

§ 1615.402 Pricing policy.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(A) For contracts with 1,500 or more enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403–4(a)(1), OPM will require the carrier to provide the data and methodology used to determine the FEHB Program rates. OPM will also require the data and methodology used to determine the medical loss ratio (MLR) as defined in the ACA (Pub. L. 111–148) and as defined by HHS in 45 CFR part 158 for all FEHB community rated plans other than those required by state law to use Traditional Community Rating. The carrier will provide cost or pricing data, as well as the FEHB-specific MLR threshold data required by OPM in its rate instructions for the applicable contract period. OPM will evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

* * * * *

■ 5. Revise § 1615.406–2 to read as follows:

§ 1615.406–2 Certificates of accurate cost or pricing data for community rated carriers.

(a) The contracting officer will require a carrier with a contract meeting the requirements in 1615.402(c)(2) or (3) to execute one or more of the Certificates contained in this section. A carrier with a contract meeting the requirements in 1615.402(c)(2) will complete the appropriate Certificate(s) and keep such on file at the carrier's place of business in accordance with 1652.204–70. A carrier with a contract meeting the requirements in 1615.402(c)(3) will complete and submit the appropriate certificate(s) to OPM.

(b) A carrier using the SSSG methodology described in 1615.402(c)(3)(i) will submit the ''Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (SSSG methodology)'' along with its rate reconciliation during the first quarter of the applicable contract year. A carrier using the MLR methodology described in 1615.402(c)(3)(ii) will submit two forms. The ''Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (MLR methodology)'' will be submitted along with the rate reconciliation during the first quarter of the applicable contract year. The ''Certificate of Accurate MLR Calculation'' will be submitted when the carrier submits its FEHB-specific MLR calculation to OPM.

(Beginning of first certificate)

Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (SSSG methodology)

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting officer or the Contracting officer's representative or designee, in support of the _____*FEHB Program rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHB Program contract and are accurate, complete, and current as of the date this certificate is executed; and (2) the methodology used to determine the FEHB Program rates is consistent with the methodology used to determine the rates for the carrier's Similarly Sized Subscriber Groups.

*Insert the year for which the rates apply.

Firm: _____

Name: _____

Signature: _____

Date of Execution: _____

(End of first certificate)

(Beginning of second certificate)

Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (MLR methodology)

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting officer or the Contracting officer's representative or designee, in support of the _____*FEHB Program rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHB Program contract and are accurate, complete, and current as of the date this certificate is executed;

*Insert the year for which the rates apply.

Firm: _____

Name: _____

Signature: _____

Date of Execution: _____

(End of second certificate)

(Beginning of third certificate)

Certificate of Accurate MLR Calculation

This is to certify that, to the best of my knowledge and belief: the determination of the carrier's FEHB-

specific medical loss ratio for * is accurate, complete, and consistent with the methodology as stated in § 1615.402(c)(3)(ii).

*Insert the year for which the MLR calculation applies.

Firm: _____

Name: _____

Signature: _____

Date of Execution: _____

(End of certificate)

Subchapter H—Clauses and Forms

PART 1652—CONTRACT CLAUSES

■ 6. The authority citation for Part 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 7. In § 1652.216–70, revise paragraph (b)(4) to read as follows:

§ 1652.216–70 Accounting and price adjustment.

* * * * *

(b) * * *

(4) If rates are determined by comparison with the FEHB-specific MLR threshold, then if the MLR for the carrier's FEHB plan is found to be lower than the published FEHB-specific MLR threshold, the carrier must pay a subsidization penalty equal to the difference into a subsidization penalty account.

* * * * *

[FR Doc. 2012–7835 Filed 3–30–12; 8:45 am]

BILLING CODE 6325–64–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

[FNS–2011–0021]

RIN 0584–AE11

National School Lunch Program: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010; Approval of Information Collection Request

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim final rule; approval of information collection request.

SUMMARY: The Food and Nutrition Service published an interim final rule entitled ''National School Lunch Program: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010'' on June 17, 2011. The Office of Management and Budget (OMB) cleared the associated information collection requirements (ICR) on February 6, 2012. This document announces approval of the ICR.

DATES: The ICR associated with the interim rule published in the **Federal Register** on June 17, 2011, at 76 FR 35301, was approved by OMB on February 6, 2012, under OMB Control Number 0584–0565.

FOR FURTHER INFORMATION CONTACT: Lynn Rodgers-Kuperman, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302, (703) 305–2600, or *Lynn.Rogers@fns.usda.gov.*

SUPPLEMENTARY INFORMATION: The June 2011 rule amended National School Lunch Program (NSLP) regulations to conform to requirements contained in the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296) regarding equity in school lunch pricing and revenue from nonprogram foods sold in schools. It requires school food authorities (SFAs) participating in the NSLP to provide the same level of financial support for lunches served to students who are not eligible for free or reduced price lunches as is provided for lunches served to students eligible for free lunches, and also that all food sold in a school and purchased with funds from the nonprofit school food service account, other than meals and supplements reimbursed by the Department of Agriculture, must generate revenue at least equal to the cost of such foods. The rule too comments on its ICR until August 16, 2011. This document announces OMB's approval of the ICR under OMB Control Number 0584–0565.

Dated: March 26, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2012–7762 Filed 3–30–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1728

Specification for 15 kV and 25 kV Primary Underground Power Cable

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations regarding electric distribution specifications for 15kV and 25 kV primary underground power cable. This rule will rescind Bulletin 50–70 (U–1), ''REA Specification for 15 kV and 25 kV Primary Underground Power Cable,'' and codify the material which was formerly incorporated by reference. The specifications and standards that appeared in the old RUS Bulletin 50–70 (U–1) will be incorporated by reference and will update the specifications for 15kV and 25kV underground power cable, and provide RUS borrowers with specifications for 35 kV underground power cable for use in 25 kV primary systems. These specifications cover single-phase and multi-phase primary underground power cable which RUS electric borrowers use to construct their rural underground electric distribution systems.

DATES: This rule is effective May 2, 2012.

Incorporation by Reference: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of May 2, 2012

FOR FURTHER INFORMATION CONTACT: Mr. Trung V. Hiu, Electrical Engineer, Electric Staff Division, Distribution Branch, Rural Utilities Service, United States Department of Agriculture, Room 1262–S, 1400 Independence Avenue SW., Washington, DC 20250–1569. Telephone: (202) 720–1877. FAX: (202) 720–7491. Email: *Trung.Hiu@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is exempted from the Office of Management and Budget (OMB) review for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A notice of the final rule entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034) exempted the Rural Utilities Service loans and loan guarantees to form coverage under this order.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Rural Utilities Service has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In

addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 13132

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications to require preparation of a Federalism Assessment.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Rural Utilities Service is not required by 5 U.S.C. et seq. or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

Information Collection and Recordkeeping Requirements

This final rule contains no additional information collection and recordkeeping requirements and is cleared under control number 0572–0131 pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice titled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034), advising that Rural Utilities Service loans and loan guarantees are excluded from the scope of Executive Order 12372.

Unfunded Mandates

This final rule contains no Federal Mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995 [2 U.S.C. chapter 25]) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

The Rural Utilities Service has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Background

RUS maintains a system of bulletins that contain construction standards and specifications for materials and equipment which must be complied with when system facilities are constructed by electric and telecommunications borrowers in accordance with the loan contract. These standards and specifications contain standard construction units and material items and equipment units commonly used in electric and telecommunications borrowers' systems.

RUS in conjunction with the Office of the Federal Register determined that Bulletin 50–70 (U–1), ''REA Specification for 15 kV and 25 kV Primary Underground Power Cable,'' would be codified. The material will now appear in 7 CFR 1728.204. Rescinding Bulletin 50–70 (U–1) and codifying the material in its entirety provides greater convenience for RUS borrowers when searching for specifications and standards requirements. Additionally, the specifications and standards that appeared in the old RUS Bulletin 50–70 (U–1) will be incorporated by reference in 1728.97 and will update the specifications for 15kV and 25kV underground power cable, and provide RUS borrowers with specifications for 35 kV underground power cable for use in 25 kV primary systems. These specifications cover single-phase and multi-phase primary underground power cable which RUS electric borrowers use to construct their rural underground electric distribution systems. These changes provide standard requirements for 15kV and 25 kV single-phase and multi-phase primary underground power cable with cross-linked polyethylene with tree retardant or ethylene propylene rubber insulation, concentric neutral, and insulating outer jacket and updates the specifications for 15kV and 25 kV primary underground cable while adding specifications for 35 kV primary underground power cable.

The following changes and updates are as follows:

1. Water blocking sealant would be required in all stranded conductor cables.
2. The plain cross-linked polyethylene (XLP) would be removed and be replaced by tree-retardant cross-linked polyethylene (TR–XLPE) as an acceptable insulation material.
3. Nominal insulation thickness on 25 kV cable would be reduced from 345 mils to 260 mils.
4. An optional semi-conducting jacketing material would be added to the specification for cables of all three specified voltages. Cables with semi-conducting jackets may be used by RUS borrowers in areas with soil resistivity greater than 25 ohm-meter, in lieu of using cables with an insulating jacket to help improve the effectiveness of system grounding in locations of high soil resistivity.

Summary of Comments

A proposed rule entitled ''Specifications for Primary Underground Power Cable,'' was published August 30, 2007, at 72 FR 50081, invited interested parties to submit comments. The National Rural Electric Cooperative Association Transmission and Distribution (NRECA T&D) Engineering Underground Subcommittee and the cable manufacturers—Prysmian Cables & Systems (PCS), Southwire, General Cable, Nexans Energy, Hendrix Wire and Cable (HWC), submitted comments. No comments from any other sources were received. The comments submitted by NRECA represent the views of its members.

Comment: NRECA T&D suggested adding the abbreviations IEEE, LDPE, LLDPE, MDPE and HDPE to the ''Abbreviations'' section.

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: PCS suggested removing the word ''insulating'' as this implies a voltage rating for the jacket. Jackets do not have a voltage rating per the National Electrical Code (NEC).

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: Southwire suggested updating the publication dates of reference standards and adding ASTM B835–04, B836–00 (2005), B901–04, B902–04a standards.

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: Southwire, NRECA T&D, General Cable, and Nexans suggested adding Insulated Cable Engineers Association, Inc. (ICEA) to the list of addresses.

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: General Cable suggested adding the address: IHS; 15 Inverness Way East; Englewood, CO 80112; Telephone: 800–854–7179; Web Site: *http://www. globe,ihs.com* (7, section 3b, ''Availability of Publications'').

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: Southwire recommended adding compressed and compact round stranded copper conductors using single input wire construction in accordance with ASTM B902–4a and B835–04 to this section.

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: PCS suggested correcting the ''R14'' in the first line to ''H14''. This was a typo.

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: General Cable, Nexans Energy, PCS, and Southwire suggested the following changes: Central aluminum phase conductors shall be one of the following:

This part should be changed to 4d which would require the conductor to be filled whether it be copper or aluminum. The requirement to fill the conductor interstices so as not to allow moisture to migrate through the conductor should be for both aluminum and copper conductor and not just for aluminum conductor. Filling the strands of a conductor is done to pick moisture out to the conductor and whereby limiting the moisture that can migrate into the insulation.

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: PCS suggested replacing the word ''moisture'' with the word ''water''. The test protocol is a Water penetration test.

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: All cable manufacturers recommended removing the requirement for indent printing on a solid conductor. Requiring indent print on solid conductors does not seem consistent with keeping the interface of the conductor and extruded components smooth. Using indent on a solid conductor will cause the surface of the conductor to have some metal displacement and create irregularities on the conductor surface. Indent printing on the center strand of a stranded conductor is being used today on cables and this type of identification should be limited to stranded conductor and not used on solid conductor use for medium voltage cables.

Agency Response: RUS agrees with the recommendation and has revised the final rule.

Comment: Conductor Shield, NRECA T&D suggested adding (for discharge resistant EPR) after the first word ''insulating''—''The void and protrusion limits on the conductor shield shall be in compliance with ANSI/ICEA S–94–649'' as was done in the Insulation Shield Section (or state the actual limits).

Agency Response: The RUS agrees with the recommendation and has added ''The void and protrusion limits on the conductor shield shall be in compliance with ANSI/ICEA S–94–649''.

Comment: PCS suggested replacing the words ''An insulating'' with ''A non-conducting''. This will align the wording with ANSI/ICEA S–94–649 standard.

Agency Response: RUS agrees with the recommendation and has revised the final rule.

Comment: Insulation, NRECA T&D suggested adding ''The void and protrusion limits on the insulation shall be in compliance with ANSI/ICEA S–94–649'' as was done in the Insulation Shield Section (or state the actual limits).

Agency Response: RUS agrees with the recommendation and has added ''The void and protrusion limits on the conductor shield shall be in compliance with ANSI/ICEA S–94–649''.

Comment: PCS suggested removing the words inside the parentheses ''(e.g., cross-linked polyethylene shield may be used with EPR insulation)''. The term ''thermosetting polymeric layer'' sets forth the requirement sufficiently. As a matter of technical clarification, the insulation shield materials are not XLPE but are in fact a co-polymer material. Polymeric layer is a good way to refer to these materials.

Agency Response: RUS agrees with the recommendation and has revised the final rule.

Comment: PCS stated there is no technical justification to have different minimum stripping tensions for EPR and TRXLPE. This requirement needs to be changed so both materials have the same minimum tension of 3 pounds as required by the ANSI approved industry standard.

Agency Response: Stripping tensions values shall be 3 through 18 pounds (1.36 through 8.16 kg) for EPR discharge free and TR–XLPE cables. Discharge resistant cables shall have strip tension of 0 through 18 pounds (0 through 8.16 kg).

Comment: General Cable suggested changing the requirement of stripping tension for TR–XLPE cable to the industry standard of a maximum of 24 lb. Limiting the maximum stripping tension to 18 lb will cause quality cable to be rejected based on a difference of 6 lb. The industry standards require that the cables be able to be stripped at temperatures between −10c and 40c without tearing based on a defined test procedure regardless of the actual stripping tension.

Agency Response: Stripping tensions values shall be 3 through 18 pounds (1.36 through 8.16 kg) for EPR discharge free and TR–XLPE cables. Discharge resistant cables shall have strip tension of 0 through 18 pounds (0 through 8.16 kg).

Comment: HWC suggested the minimum strip tension should be 3 pounds for both EPR and TR0XLPE discharge free cable designs as required by the referenced ANSI/ICEA Standard. Specifying a difference without a technical basis would only serve to provide a justified commercial advantage.

Agency Response: Stripping tensions values shall be 3 through 18 pounds (1.36 through 8.16 kg) for EPR discharge free and TR–XLPE cables. Discharge resistant cables shall have strip tension of 0 through 18 pounds (0 through 8.16 kg).

Comment: Nexans Energy suggested the minimum strip tension of 3 lbs. should be applicable to both EPR and TR–XLPE.

Agency Response: Stripping tensions values shall be 3 through 18 pounds (1.36 through 8.16 kg) for EPR discharge free and TR–XLPE cables. Discharge resistant cables shall have strip tension of 0 through 18 pounds (0 through 8.16 kg).

Comment: PCS suggested the word ''uncoated'' in the beginning of the second line should be removed as some manufacturers will only provide flat

straps tin-coated and there is no technical reason to not allow this construction.

Agency Response: RUS disagrees and its previous experience indicates tin-coated neutral may accelerate corrosion at holidays. RUS will not allow tin-coated neutral.

Comment: PCS suggested this paragraph to read as follows: ''The jacket type shall be an Extruded-to-Fill Jacket that fills the area between the concentric neutral wires and covers the wires to the proper thickness. The jacket shall be free stripping. The jacket shall have three red stripes longitudinally extruded into the jacket surface 120 degrees apart per ANSI/ICEA S–94–649.''

Agency Response: RUS disagrees and the current text is in an acceptable format and remains unchanged.

Comment: PCS stated ICEA does a good job specifying the jacket materials. ASTM has requirements that only pertain to base resins which typically can not be measured on compounds received or have pertinence to the performance of the jacket material in its intended environment. The Extruded-to-Fill jacket materials are limited to LLDPE and LDPE. The references to (insulating) and to the ASTM D1248 specification should be removed. This paragraph should be changed to ''Nonconducting jackets shall be LDPE or LLDPE compound meeting the requirements of ANSI/ICEA S–94–649.''

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: NRECA T&D suggested checking with Dow Chemical and/or Borealis to confirm the vapor transmission rate of 2 g/m2/24 hours is valid for current semi-conducting jacket compounds.

Agency Response: RUS has verified and confirmed with Dow Chemical of the current physical properties specification of the DOW DHDA–7708 Black moisture vapor transmission rate at 38 degree C, 90% RH is 1.5 gms/m2/24 hrs (ASTME96).

Comment: PCS stated this paragraph indicates a maximum moisture vapor transmission rate of 2 g/m^2/24 hours at 38 °C and 96% relative humidity in accordance with ASTM E 96. They believe there is no test data to support there are materials commercially available to meet this maximum value. They suggest that this value be removed.

Agency Response: RUS has verified and confirmed with Dow Chemical of the current physical properties specification of the DOW DHDA–7708 Black moisture vapor transmission rate at 38 degree C, 90% RH is 1.5 gms/m2/24 hrs (ASTME96).

Comment: ''Overall Outer Jacket'', paragraph a (3), Southwire stated the requirement for maximum moisture transmission rate of 2 g/m^2/24 hours at 38 °C (100 ° F) and 96% relative humidity in accordance with ASTM E 96 does not agree with existing data sheets from the material provider, Dow Chemical. Their product was tested at 90% RH. Southwire suggested this requirement be verified with the material supplier or deleted.

Agency Response: RUS has verified and confirmed with Dow Chemical of the current physical properties specification of the DOW DHDA–7708 Black moisture vapor transmission rate at 38 degree C, 90% RH is 1.5 gms/m2/24 hrs (ASTME96).

Comment: ''Overall Outer Jacket'', paragraph a (3), Southwire suggested the word ''maximum'' should be added to the first sentence—Semi-conducting jackets shall have a maximum radial resistivity of 100 ohm-meter.

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: NRECA T&D, General Cable, PCS, Nexans Energy, and Southwire suggested deleting Dimensional Tolerances—this section come from the old U–1 and ICEA S–94–649 has minimum and maximum tolerances on each layer of the cable construction but not on the overall cable core. There is an Appendix C in ICEA to calculate these tolerances and they will vary greatly by conductor size and insulation thickness.

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: General Cable suggested changing ''Partial Discharge Tests'' to Discharge Tests: Manufacturers shall demonstrate that their cable meets either the partial discharge test for Discharge Free cable design or the Discharge Resistance test for Discharge Resistant cable designs as required per ICEA S–94–649 and as described in b(1) or b(2) of this bulletin.

Agency Response: RUS disagrees. The current text is acceptable.

Comment: Jacket tests, cable manufacturers suggested the (cold bend test) requirement be omitted. Since polyethylene's (low, medium and high density) have excellent cold temperature properties, there is no need to do cold bend test. ICEA standards do not require a cold bend test for these jacket materials for the reason stated above. Jacket material such as Polyvinyl Chloride (PVC) and Chlorinated Polyethylene (CPE) do require a cold bend test but are not allowed to be used in this specification.

Agency Response: RUS agrees with the recommendation and has revised the final rule accordingly.

Comment: HWC suggested that jacket type is only printed if the jacket is semi-conducting as required by the referenced ANSI/ICEA Standard.

Agency Response: RUS disagrees. The current text and format are acceptable.

Comment: PCS stated the cable reel is not for protection but to allow ease of handling and installation of the cable. They recommend that the purchaser define the class of reels and reel covering material that one want specified per NEMA WC26. The reel and covering should be at the mutual agreement of the purchaser and the manufacturer.

Agency Response: RUS disagrees. The current text and requirement are acceptable.

List of Subjects in 7 CFR Part 1728

Electric power, Incorporation by reference, Loan programs—energy, Rural areas.

For the reasons set out in the preamble, 7 CFR part 1728 is amended as follows:

PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

■ 1. The authority citation for part 1728 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 7 U.S.C. 1921 *et seq.;* 7 U.S.C. 6941 *et seq.*

■ 2. In § 1728.97, redesignate paragraphs (e), (f), and (g) as paragraphs (f), (h), and (i), respectively, revise paragraph (d), and add new paragraphs (e) and (g) to read as follows:

§ 1728.97 Incorporation by reference of electric standards and specifications.

* * * * *

(d) The American National Standards Institute/Insulated Cable Engineers Association, Inc. (ANSI/ICEA) makes the following material available for purchase from Global Engineering Documents for a fee at the following address: IHS Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, Phone: (303) 397–7956; (800)–854–7179, Fax: (303) 397–2740, email: *global@ihs.com,* Web site: *http://global.ihs.com.*

(1) ANSI/ICEA S–94–649–2004—Standard for Concentric Neutral Cables Rated 5 Through 46 KV (ANSI/ICEA S–94–649–2004), approved September 20, 2005, incorporation by reference approved for § 1728.204.

(2) ANSI/ICEA T–31–610–2007—Test Method for Conducting Longitudinal Water Penetration Resistance Tests on Blocked Conductors (ANSI/ICEA T–31–610–2007), approved October 31, 2007, incorporated by reference approved for § 1728.204.

(e) Copies of American Society for Testing and Materials (ASTM) publications referenced in this specification can be obtained from ASTM for a fee at the following address: ASTM, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, Telephone: (610) 832–9585, Web site: *http://astm.org*.

(1) ASTM B 3–01 (Reapproved 2007)—Standard Specification for Soft or Annealed Copper Wire, (ASTM B 3–01) approved March 15, 2007, incorporated by reference approved for § 1728.204.

(2) ASTM B 8–04—Standard Specification for Concentric-Lay-Stranded Copper Conductors, Hard, Medium-Hard, or Soft (ASTM B 8–04), approved April 1, 2004, incorporated by reference approved for § 1728.204.

(3) ASTM B 230/B 230M–07—Standard Specification for Aluminum 1350–H19 Wire for Electrical Purposes (ASTM B 230/B 230M–07), approved March 15, 2007, incorporated by reference approved for § 1728.204.

(4) ASTM B 231/B 231M–04—Standard Specification for Concentric-Lay-Stranded Aluminum 1350 Conductors (ASTM B 231/B 231M–04), approved April 1, 2004, incorporated by reference approved for § 1728.204.

(5) ASTM B 400–08—Standard Specification for Compact Round Concentric-Lay-Stranded Aluminum 1350 Conductors (ASTM B 400–08), approved September 1, 2008, incorporated by reference approved for § 1728.204.

(6) ASTM B 496–04—Standard Specification for Compact Round Concentric-Lay-Stranded Copper Conductors (ASTM B 496–04), approved April 1, 2004, incorporated by reference approved for § 1728.204.

(7) ASTM B 609/B 609M–99—Standard Specification for Aluminum 1350 Round Wire, Annealed and Intermediate Tempers, for Electrical Purposes (ASTM B 609/B 609M–99), approved April 1, 2004, incorporated by reference approved for § 1728.204.

(8) ASTM B 786–08—Standard Specification for 19 Wire Combination Unilay-Stranded Aluminum 1350 Conductors for Subsequent Insulation (ASTM B 786–08), approved September 1, 2008, incorporated by reference approved for § 1728.204.

(9) ASTM B 787/B 787M–04—Standard Specification for 19 Wire Combination Unilay-Stranded Copper Conductors for Subsequent Insulation (ASTM B 787/B 787M–04), approved September 1, 2004, incorporated by reference approved for § 1728.204.

(10) ASTM B 835–04—Standard Specification for Compact Round Stranded Copper Conductors Using Single Input Wire Construction (ASTM B 835–04), approved September 1, 2004, incorporated by reference approved for § 1728.204.

(11) ASTM B902–04a—Standard Specification for Compressed Round Stranded Copper Conductors, Hard, Medium-Hard, or Soft Using Single Input Wire Construction (ASTM B902–04a), approved September 1, 2004, incorporated by reference approved for § 1728.204.

(12) ASTM D 1248–05—Standard Specification for Polyethylene Plastics Extrusion Materials for Wire and Cable (ASTM D 1248–05), approved March 1, 2005, incorporated by reference approved for § 1728.204.

(13) ASTM D 2275–01 (Reapproved 2008)—Standard Test Method for Voltage Endurance of Solid Electrical Insulating Materials Subjected to Partial Discharges (Corona) on the Surface (ASTM D 2275–01), approved May 1, 2008, incorporated by reference approved for § 1728.204.

(14) ASTM E 96/E 96M–05—Standard Test Methods for Water Vapor Transmission of Materials (ASTM E 96/E 96M–05), approved May 1, 2005, incorporated by reference approved for § 1728.204.

* * * * *

(g) The following material is available from the Insulated Cable Engineers Association (ICEA) and may be purchased from Global Engineering Documents for a fee at the following address: IHS Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, Phone: (303) 397–7956; (800)–854–7179, Fax: (303) 397–2740, email: *global@ihs.com,* Web site: *http://global.ihs.com*.

(1) ICEA T–32–645–93—Guide for Establishing Compatibility of Sealed Conductor Filler Compounds with Conducting Stress Control Materials (ICEA T–32–645–93), approved February 1993, incorporated by reference approved for § 1728.204.

(2) [Reserved]

■ 3. Add and reserve new § 1728.203 to read as follows:

§ 1728.203 [Reserved]

■ 4. Add new § 1728.204 to read as follows:

§ 1728.204 Electric standards and specifications for materials and construction.

(a) *General specifications.* This section details requirements for 15 and 25 kV single phase, V-phase, and three-phase power cables for use on 12.5/7.2 kV (15 kV rated) and 24.9/14.4 kV (25 kV rated) underground distribution systems with solidly multi-grounded neutral. Cable complying with this specification shall consist of solid or strand-filled conductors which are insulated with tree-retardant cross-linked polyethylene (TR–XLPE) or ethylene propylene rubber (EPR), with concentrically wound copper neutral conductors covered by a nonconducting or semiconducting jacket. 35 kV rated cables may be used in 24.9/14.4 kV application where additional insulation is desired.

(1) The cable may be used in single-phase, two (V)-phase, or three-phase circuits.

(2) Acceptable conductor sizes are: No. 2 AWG (33.6 mm^2) through 1000 kcmil (507 mm^2) for 15 kV cable, No. 1 AWG (42.4 mm^2) through 1000 kcmil (507 mm^2) for 25 kV, and 1/0 (53.5 mm^2) through 1000 kcmil (507 mm^2) for 35 kV cable.

(3) Except where provisions therein conflict with the requirements of this specification, the cable shall meet all applicable provisions of ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97). Where provisions of the ANSI/ICEA specification conflict with this section, § 1728.204 shall apply.

(b) *Definitions.* As used in this section:

Agency refers to the Rural Utilities Service (RUS), an agency of the United States Department of Agriculture's (USDA), hereinafter referred to as the Agency.

EPR Insulating Compound is a mixture of ethylene propylene base resin and selected ingredients.

TR–XLPE Insulating Compound is a tree retardant crosslinked polyethylene (TR–XLPE) insulation compound containing an additive, a polymer modification filler, which helps to retard the growth of electrical trees in the compound.

(c) *Phase conductors.* (1) Central phase conductors shall be copper or aluminum as specified by the borrower within the limit of § 1728.204(a)(2).

(2) Central copper phase conductors shall be annealed copper in accordance with ASTM B 3–01 (incorporated by reference in § 1728.97). Concentric-lay-stranded phase conductors shall conform to ASTM B 8–04 (incorporated by reference in § 1728.97) for Class B stranding. Compact round concentric-

lay-stranded phase conductors shall conform to ASTM B 496–04 (incorporated by reference in § 1728.97). Combination unilay stranded phase conductors shall conform to ASTM B 787/B 787M–04 (incorporated by reference in § 1728.97). Compact round atranded copper conductors using single input wire construction shall conform to ASTM B835–04 (incorporated by reference in § 1728.97). Compressed round stranded copper conductors, hard, medium-hard, or soft using single input wire construction shall conform to ASTM B902–04a (incorporated by reference in § 1728.97). If not specified, stranded phase conductors shall be Class B stranded.

(3) Central aluminum phase conductors shall be one of the following:

(i) Solid: Aluminum 1350 H12 or H22, H14 or H24, H16 or H26, in accordance with ASTM B 609/B 609M–99 (incorporated by reference in § 1728.97).

(ii) Stranded: Aluminum 1350 H14 or H24, H142 or H242, H16, or H26, in accordance with ASTM B 609/B 609M–99 (incorporated by reference in § 1728.97) or Aluminum 1350–H19 in accordance with ASTM B 230/B 230M–07 (incorporated by reference in § 1728.97). Concentric-lay-stranded (includes compacted and compressed) phase conductors shall conform to ASTM B 231/B 231M–04 (incorporated by reference in § 1728.97) for Class B stranding. Compact round concentric-lay-stranded phase conductors shall conform to ASTM B 400–08 (incorporated by reference in § 1728.97). Combination unilay stranded aluminum phase conductors shall conform to ASTM B 786–08 (incorporated by reference in § 1728.97). If not specified, stranded phase conductors shall be class B stranded.

(4) The interstices between the strands of stranded conductors shall be filled with a material designed to fill the interstices and to prevent the longitudinal migration of water that might enter the conductor. This material shall be compatible with the conductor and conductor shield materials. The surfaces of the strands that form the outer surface of the stranded conductor shall be free of the strand fill material. Compatibility of the strand fill material with the conductor shield shall be tested and shall be in compliance with ICEA T–32–645–93 (incorporated by reference in § 1728.97). Water penetration shall be tested and shall be in compliance with ANSI/ICEA T–31–610–2007 (incorporated by reference in § 1728.97).

(5) The center strand of stranded conductors shall be indented with the manufacturer's name and year of manufacture at regular intervals with no more than 12 inches (0.3 m) between repetitions.

(d) *Conductor shield (stress control layer).* A non-conducting (for discharge resistant EPR) or semi-conducting shield (stress control layer) meeting the applicable requirements of ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97) shall be extruded around the central conductor. The minimum thickness at any point shall be in accordance with ANSI/ICEA S–94–649–2004. The void and protrusion limits on the conductor shield shall be in compliance with ANSI/ICEA S–94–649–2004. The shield shall have a nominal operating temperature equal to, or higher than, that of the insulation.

(e) *Insulation.* (1) The insulation shall conform to the requirements of ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97) and may either be tree retardant cross-linked polyethylene (TR–XLPE) or ethylene propylene rubber (EPR), as specified by the borrower. The void and protrusion limits on the insulation shall be in compliance with ANSI/ICEA S–94–649–2004.

(2) The thickness of insulation shall be as follows:

Cable rated voltage	Nominal thickness	Minimum thickness	Maximum thickness
15 kV	220 mils (5.59 mm)	210 mils (5.33 mm)	250 mils (6.35 mm).
25 kV	260 mils (6.60 mm)	245 mils (6.22 mm)	290 mils (7.37 mm).
35 kV	345 mils (8.76 mm)	330 mils (8.38 mm)	375 mils (9.53 mm).

(f) *Insulation shield.* (1) A semi-conducting thermosetting polymeric layer meeting the requirements of ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97) shall be extruded tightly over the insulation to serve as an electrostatic shield and protective covering. The shield compound shall be compatible with, but not necessarily the same material composition as, that of the insulation (e.g., cross-linked polyethylene shield may be used with EPR insulation). The void and protrusion limits on the semi-conducting shields shall be in compliance with the ANSI/ICEA S–94–649–2004.

(2) The thickness of the extruded insulation shield shall be in accordance with ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97).

(3) The shield shall be applied such that all conducting material can be easily removed without the need for externally applied heat. Stripping tension values shall be 3 through 18 pounds (1.36 through 8.16 kg) for TR–XLPE and EPR discharge free cables. Discharge resistant cables shall have strip tension of 0 through 18 pounds (0 through 8.16 kg).

(4) The insulation shield shall meet all applicable tests of ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97).

(g) *Concentric neutral conductor.* (1) Concentric neutral conductor shall consist of annealed round, uncoated copper wires in accordance with ASTM B 3–01 (incorporated by reference in § 1728.97) and shall be spirally wound over the shielding with uniform and equal spacing between wires. The concentric neutral wires shall remain in continuous intimate contact with the extruded insulation shield. Full neutral is required for single phase and ⅓ neutral for three phase applications unless otherwise specified. The minimum wire size for the concentric neutral is 16 AWG (1.32 mm^2).

(2) When a strap neutral is specified by the borrower, the neutral shall consist of uncoated copper straps applied concentrically over the insulation shield with uniform and equal spacing between straps and shall remain in intimate contact with the underlying extruded insulation shield. The straps shall not have sharp edges. The thickness of the flat straps shall be not less than 20 mils (0.5 mm).

(h) *Overall outer jacket.* (1) An electrically nonconducting (insulating) or semi-conducting outer jacket shall be applied directly over the concentric neutral conductors.

(2) The jacket material shall fill the interstice area between conductors, leaving no voids. The jacket shall be free stripping. The jacket shall have three red stripes longitudinally extruded into the jacket surface 120° apart.

(3) Nonconducting jackets shall consist of low density, linear low density, medium density, or high density HMW black polyethylene

(LDPE, LLDPE, MDPE, HDPE) compound meeting the requirements of ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97) and ASTM D 1248–05 (incorporated by reference in § 1728.97) for Type I, Class C, Category 4 or 5, Grade J3 before application to the cable. Polyvinyl chloride (PVC) and chlorinated polyethylene (CPE) jackets are not acceptable.

(4) Semi-conducting jackets shall have a maximum radial resistivity of 100 ohm-meter and a maximum moisture vapor transmission rate of 1.5 g/m^2/24 hours at 38° C (100° F) and 90 percent relative humidity in accordance with ASTM E 96/E96M–05 (incorporated by reference in § 1728.97).

(5) The minimum thickness of the jacket over metallic neutral wires or straps shall comply with the thickness specified in ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97).

(i) *Tests.* (1) As part of a request for Agency consideration for acceptance and listing, the manufacturer shall submit certified test data results to the Agency that detail full compliance with ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97) for each cable design.

(i) Test results shall confirm compliance with each of the material tests, production sampling tests, tests on completed cable, and qualification tests included in ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97).

(ii) The testing procedure and frequency of each test shall be in accordance with ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97).

(iii) Certified test data results shall be submitted to the Agency for any test, which is designated by ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97) as being ''for Engineering Information Only,'' or any similar designation.

(2) *Partial discharge tests.* Manufacturers shall demonstrate that their cable is not adversely affected by excessive partial discharge. This demonstration shall be made by completing the procedures described in paragraphs (i)(2)(i) and (i)(2)(ii) of this section.

(i) Each shipping length of completed cable shall be tested and have certified test data results available indicating compliance with the partial discharge test requirements in ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97).

(ii) Manufacturers shall test production samples and have available certified test data results indicating compliance with ASTM D 2275–01 (incorporated by reference in § 1728.97) for discharge resistance as specified in the ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97). Samples of insulated cable shall be prepared by either removing the overlying extruded insulation shield material, or using insulated cable before the extruded insulation shield material is applied. The sample shall be mounted as described in ASTM D 2275–01 and shall be subjected to a voltage stress of 250 volts per mil of nominal insulation thickness. The sample shall support this voltage stress, and not show evidence of degradation on the surface of the insulation for a minimum of 100 hours. The test shall be performed at least once on each 50,000 feet (15,240 m) of cable produced, or major fractions thereof, or at least once per insulation extruder run.

(3) *Jacket tests.* Tests described in paragraph (i)(3)(i) of this section shall be performed on cable jackets from the same production sample as in paragraphs (i)(2)(i) and (i)(2)(ii) of this section.

(i) A Spark Test shall be performed on nonconducting jacketed cable in accordance with ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97) on 100 percent of the completed cable prior to its being wound on shipping reels. The test voltage shall be 4.5 kV AC for cable diameters <1.5 inches and 7.0 kV for cable diameters >1.5 inches, and shall be applied between an electrode at the outer surface of the nonconducting (insulating) jacket and the concentric neutral for not less than 0.15 second.

(ii) [Reserved]

(4) Frequency of sample tests shall be in accordance with ANSI/ICEA S–94–649–2004 (incorporated by reference in § 1728.97).

(5) If requested by the borrower, a certified copy of the results of all tests performed in accordance with this section shall be furnished by the manufacturer on all orders.

(j) *Miscellaneous.* (1) All cable provided under this specification shall have suitable markings on the outer surface of the jacket at sequential intervals not exceeding 2 feet (0.61 m). The label shall indicate the name of the manufacturer, conductor size, type and thickness of insulation, center conductor material, voltage rating, year of manufacture, and jacket type. There shall be no more than 6 inches (0.15 m) of unmarked spacing between texts label sequence. The jacket shall be marked with the symbol required by Rule 350G of the National Electrical Safety Code and the borrower shall specify any markings required by local safety codes. This is in addition to extruded red stripes required in this section.

(2) Watertight seals shall be applied to all cable ends to prevent the entrance of moisture during transit or storage. Each end of the cable shall be firmly and properly secured to the reel.

(3) Cable shall be placed on shipping reels suitable for protecting it from damage during shipment and handling. Reels shall be covered with a suitable covering to help provide physical protection to the cable.

(4) A durable label shall be securely attached to each reel of cable. The label shall indicate the purchaser's name and address, purchase order number, cable description, reel number, feet of cable on the reel, tare and gross weight of the reel, and beginning and ending sequential footage numbers.

Dated: March 8, 2012.

Jonathan Adelstein,

Administator, Rural Utilities Service.

[FR Doc. 2012–7610 Filed 3–30–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AG48

7(a) Loan Program; Eligible Passive Companies

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends SBA's existing regulations to clarify the eligible uses of loan proceeds by an Operating Company in connection with an SBA-guaranteed loan to an Eligible Passive Company.

DATES: This rule is effective on May 17, 2012 without further action, unless significant adverse comment is received by May 2, 2012. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 3245–AG48, by one of the following methods: (1) Federal eRulemaking Portal: *www.regulations.gov;* following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Grady B. Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW., Suite 8300, Washington, DC 20416.

SBA will post all comments to this rule on *www.regulations.gov.* If you wish to submit confidential business

information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to Grady B. Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW., Suite 8300, Washington, DC 20416, or send an email to *grady.hedgespeth@sba.gov.* You should highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public or not.

FOR FURTHER INFORMATION CONTACT: Grady B. Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW., Suite 8300, Washington, DC 20416; (202) 205–7562; *grady.hedgespeth@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA generally makes business loans only to small businesses engaged in regular business activities, and prohibits such assistance to entities engaged in passive investment or real estate development, or which do not engage in regular and continuous activity as an operating business. SBA regulations at 13 CFR 120.111 currently provide an exception to this prohibition on providing financial assistance to passive entities if the passive entity is an Eligible Passive Company that leases real or personal property to an Operating Company for use in the Operating Company's business and complies with the conditions set forth in the regulation. SBA defines an ''Eligible Passive Company'' or ''EPC'' as an entity that does not engage in regular and continuous business activity, which leases real or personal property to an Operating Company for use in the Operating Company's business. An ''Operating Company'' or ''OC'' is an eligible small business actively involved in conducting business operations now or about to be located on real property owned by an Eligible Passive Company, or using or about to use in its business operations personal property owned by an Eligible Passive Company.

Section 120.111 requires the Eligible Passive Company to ''use loan proceeds to acquire or lease, and/or improve or renovate, real or personal property (including eligible refinancing).'' The regulation does not specifically state the eligible uses of loan proceeds for use by the Operating Company, but does require the Operating Company to be a guarantor or a co-borrower (with the Eligible Passive Company) on the loan. In a 7(a) loan including working capital for use by the Operating Company, the regulation requires the Operating Company to be a co-borrower.

When SBA promulgated the current regulations as described above, it offered the following explanation for allowing the Operating Company to be allocated a portion of the loan proceeds in a loan to an Eligible Passive Company:

> [I]t is common for an Operating Company to need working capital when the Eligible Passive Company applies for a loan primarily to finance the acquisition of real or personal property. In the past, SBA has required the Eligible Passive Company to use the loan proceeds solely to acquire and improve property for lease to an Operating Company. Thus, two separate SBA loans would be needed—one to the Eligible Passive Company for the real estate and the other to the Operating Company for working capital.

(Notice of Proposed Rulemaking published in the **Federal Register** on December 15, 1995 (60 FR 64356) and Final Rule published on January 31, 1996 (61 FR 3226).) At that time, SBA proposed and finalized a regulatory change to allow a single loan to the EPC to be used, in part, for working capital by the OC, provided the OC is a co-borrower. The loan proceeds for working capital would be allocated to the OC, while the loan proceeds for the acquisition and improvements of the property for lease to the OC would be allocated to the EPC.

The practice of structuring a loan with the real estate held by an EPC that leases the real estate to the OC for operation of its business has become increasingly common. Further, it has come to SBA's attention that many participating lenders have interpreted this rule to allow EPCs and OCs to borrow funds for the OC's purchase of other assets for its use, including the purchase of stock or intangible assets (such as trademarks, copyrights, intellectual property, or goodwill), as long as the OC was a co-borrower with the EPC. SBA recognizes the need for this type of financing. Thus, in order to allow it to continue, SBA is amending 120.111(a)(5) to clarify that if the OC is a co-borrower with the EPC, part of the loan proceeds of a 7(a) loan may be used for working capital or the purchase of other assets for use by the OC, including the purchase of stock or intangible assets (such as trademarks, copyrights, intellectual property, or goodwill). SBA is also amending 120.120(b)(4) to conform with this change.

Because this is a clarifying amendment that is consistent with industry practice, SBA expects no significant adverse comments. Based on that fact, SBA has decided to proceed with a direct final rule giving the public 30 days to comment. If SBA receives any significant adverse comment during the comment period, SBA will withdraw the rule and publish it as a proposed rule.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under Executive Order 12866. This direct final rule is also not a major rule under the Congressional Review Act.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, SBA has determined that this direct final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, SBA has determined that this direct final rule has no federalism implications warranting the preparation of a federalism assessment.

Executive Order 13563

For the purposes of Executive Order 13563, SBA has received meaningful feedback from the industry over the past several months and has held discussions with various participating lenders that have requested this clarification. All of the input SBA has received has been supportive of this clarification.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires

administrative agencies to consider the effect of their actions on small entities, including small businesses. According to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA allows an agency to certify a rule in lieu of preparing an analysis, if the rulemaking is not expected to have a significant impact on a substantial number of small entities. This rule amends existing Agency regulations to clarify the eligible uses of loan proceeds for an Operating Company when it is a co-borrower with an Eligible Passive Company and does not create new requirements. These amendments will affect small entities; however, SBA has determined that these amendments will not have a significant economic impact on a substantial number of such entities.

List of Subjects in 13 CFR Part 120

Community development, Exports, Loan programs—business, Small businesses.

For the reasons stated in the preamble, SBA amends 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3), and 697(a) and (e); Pub. L. 111–5, 123 Stat. 115, Pub. L. 111–240, 124 Stat. 2504.

■ 2. Amend § 120.111 by revising paragraph (a)(5) to read as follows:

§ 120.111 What conditions must an Eligible Passive Company satisfy?

* * * * *

(a) * * *

(5) The Operating Company must be a guarantor or co-borrower with the Eligible Passive Company. In a 7(a) loan that includes working capital and/or the purchase of other assets, including intangible assets, for the Operating Company's use, the Operating Company must be a co-borrower.

* * * * *

■ 3. Amend § 120.120 by revising paragraph (b)(4) to read as follows:

§ 120.120 What are eligible uses of proceeds?

* * * * *

(b) * * *

(4) Working capital (if the Operating Company is a co-borrower with the Eligible Passive Company, part of the loan proceeds may be applied for working capital and/or the purchase of other assets, including intangible assets, for use by the Operating Company).

* * * * *

Dated: March 26, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–7808 Filed 3–30–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 171 and 172

[CBP Dec. 12–07]

Changes in the Statutory Authority for Petitions for Relief

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; technical corrections.

SUMMARY: This document amends U.S. Customs and Border Protection (CBP) regulations by making technical corrections to reflect the repeal of one of the underlying statutory authorities regarding petitions for relief from a fine, penalty, forfeiture, or liquidated damages under a law administered by CBP. Administrative petitioning rights are not affected by removal of this authority because CBP has other existing statutory authority for these provisions. This document also amends regulations to reflect changes in delegation authority as effected by the transfer of CBP to the Department of Homeland Security (DHS), and makes non-substantive editorial and nomenclature changes.

DATES: The final rule is effective on April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Todd Schneider, Penalties Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, Tel. (202) 325–0261.

SUPPLEMENTARY INFORMATION:

Background

This document amends title 19 of the Code of Federal Regulations (19 CFR) by making technical corrections to 19 CFR parts 171 and 172, specifically, sections 171.11, 171.12, 172.11, and 172.12.

These regulations delegate to the Fines, Penalties, and Forfeitures Officer or the Chief, Penalties Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection (CBP) Headquarters the authority to remit or mitigate fines, penalties, or forfeitures, or cancel claims for liquidated damages.

The purpose of the technical corrections is to conform the statutory authority sections listed for 19 CFR parts 171 and 172 and the text of the relevant regulatory provisions to reflect the repeal of title 46, United States Code (U.S.C.) Appendix section 320 (24 Stat. 81), enacted June 19, 1886, which is currently cited as one of the underlying statutory authorities. Title 46 U.S.C. Appendix section 320 was repealed as part of the recodification of the appendix to title 46 of the United States Code, by Public Law 109–304, section 19 (120 Stat. 1711), which was enacted October 6, 2006, and this document removes the repealed statutory citation from the CBP regulations.

Please note that CBP has existing statutory authority to continue accepting administrative petitions under 19 U.S.C. 1618, 1623, and 31 U.S.C. 5321, as appropriate. Therefore, this rule does not alter the rights of a person alleged to have committed a violation, or a breach of a bond condition, to petition for relief.

This document also amends 19 CFR 171.12 to reflect the transfer of authority from the Treasury Department to the U.S. Department of Homeland Security (DHS) and the delegation of authority from DHS to the Commissioner of CBP.

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. Accordingly, as of March 1, 2003, the former U.S. Customs Service of the Department of the Treasury was transferred to DHS and reorganized to become CBP.

On May 15, 2003, the Treasury Department issued Treasury Department Order Number No. 100–16 delegating to DHS its authority related to the customs revenue functions, with certain delineated exceptions in which the Treasury Department retained its authority. *See* Appendix to 19 CFR part 0. The Treasury Department transferred to DHS its authority over fines, penalties, and forfeitures and the Secretary of DHS further delegated this authority to the Commissioner of CBP. Accordingly, this document amends 19 CFR 171.12 to reflect these changes.

Inapplicability of Notice and Delayed Effective Date

Because the technical corrections set forth in this document are necessary to conform 19 CFR parts 171 and 172 to reflect the repeal of 46 U.S.C. Appendix section 320, pursuant to 5 U.S.C. 553(b)(B), CBP finds that good cause exists for dispensing with notice and

public procedure as unnecessary. For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

The Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866

As these amendments are technical corrections to the regulations to reflect statutory changes, these amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Signing Authority

This document is limited to technical corrections of the CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b)(1).

List of Subjects

19 CFR Part 171

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Seizures and forfeitures.

19 CFR Part 172

Administrative practice and procedure, Customs duties and inspection, Penalties.

Amendments to the CBP Regulations

For the reasons stated in the preamble, parts 171 and 172 of title 19 of the Code of Federal Regulations (19 CFR parts 171 and 172) are amended as set forth below.

PART 171—FINES, PENALTIES, AND FORFEITURES

■ 1. The authority citation for part 171 is revised to read as follows:

Authority: 18 U.S.C. 983; 19 U.S.C. 66, 1592, 1593a, 1618, 1624; 22 U.S.C. 401; 31 U.S.C. 5321.

§ 171.11 [Amended]

■ 2. Section 171.11(a) is amended by removing the phrase '', or section 320 of title 46, United States Code App. (46 U.S.C. App. 320),''.

§ 171.12 [Amended]

■ 3. Section 171.12 is amended by:
■ a. Adding the word, ''or'', before the phrase ''section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c))'';
■ b. Removing the phrase '', or section 320 of title 46, United States Code App. (46 U.S.C. App. 320),'';
■ c. Removing the words '', unless there has been no delegation to act by the Secretary of the Treasury or his designee'';
■ d. Removing the last sentence of the paragraph; and
■ e. Adding the punctuation ''.'' after the word ''appropriate''.

PART 172—CLAIMS FOR LIQUIDATED DAMAGES; PENALTIES SECURED BY BONDS

■ 4. The authority citation for part 172 is revised to read as follows:

Authority: 19 U.S.C. 66, 1618, 1623, 1624.

§ 172.11 [Amended]

■ 5. Section 172.11(a) is amended by removing the phrase '', or section 320 of title 46, United States Code App. (46 U.S.C. App. 320),'', and by removing the word ''shall'' and adding in its place the word ''will''.

§ 172.12 [Amended]

■ 6. Section 172.12 is amended by:
■ a. Removing the phrase '', or section 320 of title 46, United States Code App. (46 U.S.C. App. 320),'';
■ b. Adding the words ''International Trade, '' after the words, ''Office of''; and
■ c. Removing the word ''Customs'' and adding in its place the term ''CBP''.

Dated: March 28, 2012.

David V. Aguilar,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2012–7814 Filed 3–30–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2012–N–0165]

Medical Devices; Immunology and Microbiology Devices; Classification of Norovirus Serological Reagents; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: In the **Federal Register** of March 9, 2012 (76 FR 14272), the Food and Drug Administration (FDA) classified norovirus serological reagents into class II (special controls) because special controls, in addition to general controls, will provide a reasonable assurance of safety and effectiveness of these devices. The document published with inadvertent errors in the Analysis of Impacts section. This document corrects those errors.

DATES: Effective April 9, 2012.

FOR FURTHER INFORMATION CONTACT: Steven Gitterman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5518, Silver Spring, MD 20993–0002, 301–796–6694.

SUPPLEMENTARY INFORMATION: In FR Doc. 2012–5675 appearing on page 14272 in the **Federal Register** of Friday, March 9, 2012, the following corrections are made:

1. On page 14274, in the first column, in section VI. Analysis of Impacts, in the first paragraph, in the last sentence, correct the phrase ''proposed rule'' to read ''final rule'', and in the second paragraph, in the last sentence, correct the phrase ''proposes to certify'' to read ''certifies''.

2. On page 14274, in the second column, in the first full sentence, correct the phrase ''proposed rule'' to read ''final rule''.

Dated: March 27, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–7757 Filed 3–30–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0039]

RIN 1625–AA08

Special Local Regulations; Savannah Tall Ships Challenge, Savannah River, Savannah, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the Savannah River in Savannah, Georgia during the Savannah Tall Ships Challenge. The Savannah Tall Ships Challenge will take place from Thursday, May 3, 2012 through Monday, May 7, 2012. Approximately 15 vessels are anticipated to participate in the event. These special local regulations are necessary to provide for the safety of life and property on navigable waters of the United States during the event. The special local regulations establish the following three areas: Mooring zones; buffer zones; and

a staging area. First, mooring zones will be established around vessels participating in the Savannah Tall Ships Challenge while the vessels are moored at their mooring locations along the right and left descending banks of the Savannah River in Savannah, Georgia. Second, buffer zones will be established around vessels participating in the Savannah Tall Ships Challenge as they transit from their mooring locations on the Savannah River to the staging area. Third, a staging area will be established, where vessels participating in the Savannah Tall Ships Challenge will congregate before commencing their voyage to the next port as part of the 2012 Tall Ships Challenge. Persons and vessels that are not participating in the Savannah Tall Ships Challenge are prohibited from entering, transiting through, anchoring in, or remaining within the mooring zones, buffer zones, or staging area unless authorized by the Captain of the Port Savannah or a designated representative.

DATES: This rule is effective from 10:30 a.m. on May 3, 2012 through 4:30 p.m. on May 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–2012–0039 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0039 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 final rule, call or email Chief Petty Officer Benjamin Mercado, Marine Safety Unit Savannah Office of Waterways Management, Coast Guard; telephone (912) 652–4353, email *Benjamin.Mercado@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 February 7, 2012, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations; Savannah Tall Ships Challenge, Savannah River, Savannah, GA in the **Federal Register** (77 FR 6039). We received two comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

The legal basis for the temporary final rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to insure safety of life and property on navigable waters of the United States during the Savannah Tall Ships Challenge.

Discussion of Comments and Changes

The Coast Guard received two comments regarding the NPRM. One comment stated that the proposed rule provided the Captain of the Port of Savannah with almost unlimited discretion as to navigation of regions of the Savannah River for the time period in question. As a result, the comment recommended that the proposed rule be rewritten to limit the discretion of the Captain of the Port of Savannah to ensure large shipping vessels are not disrupted from their activities at the Port of Savannah. There was also concern that many such ships are traveling from a great distance and would not receive notice of any disruption in the Port, and the ramifications of such ships being unable to make a delivery could be significant.

The Coast Guard understands these concerns. However, the Captain of the Port has the authority under 33 U.S.C. 1233 and 33 CFR 100.35 to promulgate special local regulations to promote the safety of life on navigable waters of the United States during regattas or marine parades. These regulations may include restrictions and controls over vessel movement immediately before, during, and after the event. The Coast Guard issued a marine event permit for the Savannah Tall Ships Challenge under 33 CFR part 100 because the event (due to its nature, circumstances, or location) will introduce extra or unusual hazards to the safety of life on the navigable waters of the United States. Specifically, the Coast Guard believes the Savannah Tall Ships Challenge will attract a significant amount of recreational boating traffic not normally present on the Savannah River. Additionally, due to the narrow width of the Savannah River, the Coast Guard finds it necessary to establish the mooring and buffer zones to protect the vessels participating in the Savannah Tall Ships Challenge, as well as the commercial and recreational vessels that will be present on the Savannah River during the event. Before publishing the NPRM, the Coast Guard limited the scope of the special local regulations to the extent necessary to provide for the safety of life and property on navigable waters of the United States during the event. The Coast Guard also understands the concerns about large shipping vessels not having notice or being able to make a delivery. As such, the NPRM was published in the **Federal Register** 85 days prior to the enforcement date of this temporary final rule, this rule will be published in the **Federal Register** at least 30 days before it is enforced, and the Coast Guard will provide notice of the Savannah Tall Ships Challenge via Local Notice to Mariners, Broadcast Notice to Mariners, and a Maritime Safety and Security Bulletin. Finally, persons and vessels may request authorization from the Captain of the Port Savannah to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port Savannah by telephone at (912) 652–4353, or a designated representative via VHF radio on channel 16.

The second comment requested a change to the location of the Tall Ships Challenge race start. The comment stated that the race start in the NPRM is in the middle of a pilot boarding area, and because these tall ships are under sail power they require space away from commercial vessel traffic to maneuver safely. Therefore, it was recommended that the race start be moved. The Coast Guard understands this comment about the starting area to be referring to the staging area that is set forth in the NPRM. The Coast Guard concurs with the recommendation to move the staging area. As a result, the Coast Guard has moved the staging area to encompass all waters within one nautical mile radius of position 31°59′30″ N 80°42′55″ W. This new area is approximately two miles north of the original area. If you are aware of problems caused by this new area, please contact the person indicated in the **FOR FURTHER INFORMATION CONTACT** section, above.

Regulatory Analyses

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

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the 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 not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for a total of 102 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the regulated areas without authorization from the Captain of the Port Savannah or a designated representative, they may operate in the surrounding area during the enforcement periods; (3) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated areas if authorized by the Captain of the Port Savannah or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners, and a Maritime Safety and Security Bulletin.

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. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Savannah River encompassed within the special local regulations from 10:30 a.m. on May 3, 2012 through 4:30 p.m. on May 7, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In the NPRM, and in accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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 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 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. We have analyzed this rule under that Order and determined that this rule 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 that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves establishing special local regulations issued in conjunction with a regatta or marine parade. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 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.

■ 2. Add a temporary § 100.35T07–0039 to read as follows:

§ 100.35T07–0039 Special Local Regulations; Savannah Tall Ships Challenge, Savannah River, Savannah, GA.

(a) *Regulated Areas.* The following regulated areas are established as special local regulations during the Savannah Tall Ships Challenge, with the specific enforcement period for each of the regulated areas. All coordinates are North American Datum 1983.

(1) *Mooring Zones.* All waters of the Savannah River within 25 yards of vessels participating in the Savannah Tall Ships Challenge while such vessels are moored. These regulated areas will be enforced from 10:30 a.m. on May 3, 2012 until 3 p.m. on May 7, 2012.

(2) *Buffer Zones.* All waters of the Savannah River within 200 yards of vessels participating in the Savannah Tall Ships Challenge as they transit from their mooring locations to the staging area. These regulated areas will be enforced from 11:30 a.m. until 3 p.m. on May 7, 2012.

(3) *Staging Area.* All waters within a one nautical mile radius of position 31°59′30″ N 80°42′55″ W. This regulated area will be enforced from 11:30 a.m. until 4:30 p.m. on May 7, 2012.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Savannah in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Savannah or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Savannah by telephone at (912) 652–4353, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas, including the names and mooring locations of the vessels participating in the Savannah Tall Ships Challenge and the identities of the lead safety vessel and the last safety vessel as the vessels transit to the staging area, prior to the event by Local Notice to Mariners, Broadcast notice to Mariners, and a Maritime Safety and Security Bulletin. Notice will also be provided by on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced from 10:30 a.m. on May 3, 2012 through 4:30 p.m. on May 7, 2012.

Dated: March 21, 2012.

J.B. Loring,

Commander, U.S. Coast Guard, Captain of the Port Savannah.

[FR Doc. 2012–7793 Filed 3–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[Docket No. USCG–2011–0187]

RIN 1625–AB76

MARPOL Annex V Special Areas: Wider Caribbean Region

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: By this final rule, the Coast Guard amends the list of special areas in effect under Annex V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended, to include the Wider Caribbean Region special area. The current list of special areas in effect is outdated because it does not include this special area, which went into effect May 1, 2011. This rule will correct the list of special areas in effect to provide accurate information to the public.

DATES: This final rule is effective April 2, 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–2011–0187 and are 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2011–0187 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David Condino, U.S. Coast Guard Office of Port and Facility Activities; telephone 202–372–1145, email *David.A.Condino@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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G. Taking of Private Property
H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

I. Abbreviations

ABA American Boating Association
AMI Association of Marina Industries
APHIS Animal and Plant Health Inspection Service
APPS Act to Prevent Pollution from Ships, Pub. L. 96–478, as amended (33 U.S.C. 1901 *et seq.*)
CFR Code of Federal Regulations
CFV Commercial Fishing Vessel
CLIA Cruise Lines International Association
DHS Department of Homeland Security
FR **Federal Register**
IMO International Maritime Organization
ISM International Safety Management Code
MARPOL The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended
MEPC Marine Environmental Protection Committee
MISLE Marine Information for Safety and Law Enforcement
NPRM Notice of proposed rulemaking
OSV Offshore supply vessel
RCP Responsible Carrier Program
RFA Regulatory Flexibility Act
SOLAS International Convention for Safety of Life at Sea
U.S.C. United States Code
USPS U.S. Power Squadron
WCR Wider Caribbean Region

II. Regulatory History

On August 6, 2009, we published a notice and request for comments entitled ''Comment Request on MARPOL Annex V Wider Caribbean Region Special Area'' in the **Federal Register** (74 FR 39334). This notice anticipated the eventual entry into effect of the Wider Caribbean Region (WCR) special area, but recognized that no date had been set by the International Maritime Organization (IMO). We received three comments in response to the notice. Those comments are addressed in the ''Discussion of Comments and Changes'' section below.

On March 22–26, 2010, the Marine Environmental Protection Committee (MEPC) of the IMO met at IMO headquarters in London, England. On April 12, 2010, the MEPC published their ''REPORT OF THE MARINE ENVIRONMENT PROTECTION COMMITTEE ON ITS SIXTIETH SESSION'' (available free at *http://docs.imo.org/,* registration required). In that report, the MEPC set May 1, 2011 as the date for the WCR special area to come into effect.

On April 7, 2011, we published a notice entitled ''Notice of Entry into Effect of MARPOL Annex V Wider Caribbean Region Special Area'' in the **Federal Register** (76 FR 19380). That notice informed the public of the entry into effect of the WCR special area on May 1, 2011.

This Final Rule amends the regulations in 33 CFR part 151 to reflect the entry into effect of the WCR special area. The Coast Guard did not publish a Notice of Proposed Rulemaking (NPRM) for this amendment. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, because this final rule does not call for any substantive legal changes. In short, the rule merely corrects in the Coast Guard's regulations the list of special areas currently in effect. Under IMO rules, as incorporated by the Act to Prevent Pollution from Ships (APPS) and 33 CFR 151.53(b), the WCR is already in effect under U.S. law. Further, under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Good cause exists when publication would be impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Publishing an NPRM and delaying the effective date are unnecessary because the change being made is a conforming amendment required by existing authority—33 CFR 151.53(b)—and because, as explained *infra,* an opportunity for public comment has already been provided.

Also, this rulemaking merely restates a legal responsibility already in effect under MARPOL and APPS (33 U.S.C. 1901 *et seq.*), which is the U.S. authority implementing MARPOL. Through APPS, the United States accepts the IMO process for bringing Annex V special areas into effect. 33 U.S.C. 1901(a)(5), *see also* section 1907(a) (requiring compliance with MARPOL). Since the United States first accepted Annex V, another special area, the WCR, has come into effect through the IMO process. This rulemaking corrects the list at 33 CFR 151.53 to accurately list the special areas currently in effect.

The opportunity for public comment on the regulations related to APPS, including the IMO process for bringing special areas into effect, was provided in 1989. The original APPS regulations in 33 CFR parts 151, 155, and 158 were implemented through a full informal rulemaking process, including an Advance Notice of Proposed Rulemaking (53 FR 23884, June 24, 1988), an Interim Rule with Request for Comments (54 FR 18384, April 28, 1989), and a Final Rule (55 FR 35986, September 4, 1990) (APPS rulemaking). The Coast Guard held three public meetings, received public comments, and responded to all comments received. The Coast Guard received no comments on the IMO process for bringing special areas into effect. There have been no substantive changes regarding this process since the APPS rulemaking and this rulemaking also does not change that process.

In the 2009 notice and request for comments, the Coast Guard specifically requested information on issues that impact port reception facilities, commercial vessels, and recreational vessels operating in the WCR special area and requested recommendations to address any issues. We summarize and respond to those comments in section V of this document. We did not receive any additional data or information on the impacts of the WCR special area.

III. Basis and Purpose

MARPOL consists of 20 articles and Annexes I–VI. Annex V regulates the discharge of garbage from ships. The United States became a party to MARPOL through APPS, and became a party to Annex V through section 2101 of the Marine Plastic Pollution Research and Control Act (Pub. L. 100–220). MARPOL establishes nine ''special areas,'' eight of which apply to Annex V. In a MARPOL Annex V special area, the rules on the discharge of garbage are more restrictive than outside of a MARPOL Annex V special area.

This final rule modifies 33 CFR 151.53(c) and Appendix A of Part 151 to add the WCR special area to the list of special areas currently in effect. This change harmonizes Coast Guard regulations with MARPOL and clarifies where the discharge restrictions found at 33 CFR 151.71 (Operating Requirements: Discharge of garbage within special areas) apply.

IV. Background

A MARPOL Annex V special area is a sea area where the adoption of special mandatory methods for the prevention of sea pollution by garbage is required. The Coast Guard is updating the list of special areas in effect at 33 CFR 151.53(c) to include the WCR special area.

A special area under MARPOL Annex V enters into force when sufficient parties to MARPOL agree that the adoption of special mandatory methods for the prevention of sea pollution by garbage is required in that area. ''Enters into force,'' means that the special area

is defined and recognized for treaty purposes. However, the special area regulations do not apply in that special area until the special area enters into effect.

A special area enters into effect on the date set by the IMO after the IMO receives sufficient notification from Member states bordering a special area of adequate port reception facilities. This date is the special area's ''effective date.'' In a special area prior to its effective date, 33 CFR 151.69 (Operating requirements: Discharge of garbage outside special areas) applies. In a special area after its effective date, the more restrictive requirements of 33 CFR 151.71 (Operating Requirements: Discharge of garbage within special areas) apply.

The special area that this rule addresses is the WCR special area, as defined in Regulation 5(1)(h) of MARPOL Annex V and 33 CFR 151.06. This special area entered into force (but not effect) on April 4, 1993, as agreed to by Parties to MARPOL Annex V.

The MEPC decided to set the effective date after hearing a report, co-sponsored by 22 WCR Member States, during its March 2010 meeting that all but three states (Belize, Jamaica, and Nicaragua) in the WCR reported that they had adequate garbage reception facilities in their ports.[1] At that time the three WCR countries that were not listed as co-sponsors of MEPC 60/8/2 reported that they either were establishing those facilities or had made arrangements with neighboring countries.

The special discharge restrictions for the WCR special area entered into effect on May 1, 2011 (IMO Circ. Letter No. 3053, April 14, 2010[2]). As of May 1, 2011, the discharge of garbage from vessels in the WCR area is restricted to the discharge of food wastes only (i.e., subject to the restrictions of MARPOL Annex V, Regulation 5 and 33 CFR 151.71).

The list of special areas currently in effect at 33 CFR 151.53(c) does not include the WCR. This list, and Appendix A to part 151, must be corrected to provide the maritime community an accurate list of special areas currently in effect.

V. Discussion of Comments and Changes

As noted above, on August 6, 2009, we published a notice and request for comments entitled ''Comment Request on MARPOL Annex V Wider Caribbean Region Special Area'' in the **Federal Register** (74 FR 39334). This notice anticipated the eventual entry into effect of the WCR special area, even though at the time of publication no effective date had been set by the IMO. We received three letters and three different comments on the WCR special area. None of the comments indicated that the heightened discharge restrictions coming into effect for the WCR would result in increased burdens to vessels or reception facilities.

One commenter brought up the problem of dry bulk cargo wash-water. Dry bulk cargo ships are not generally designed to store wash-water and port facilities are generally not able to receive and treat wash-water. Pending a final decision by IMO, the Coast Guard supports the current IMO exception to Annex V for dry cargo wash-water discharges in special areas. Under IMO MEPC.1/Circ.675/Rev.1 26 March 2010, dry cargo residue wash-water is not considered garbage under Annex V in the WCR special area and, therefore, is not a subject of this rulemaking.

One comment expressed the commenter's belief that the Resource Conservation and Recovery Act disincentivizes commercial vessels from disposing of garbage at a shore facility. We agree that additional efforts are necessary to protect the environment from the discharge of hazardous materials at sea. However, those efforts are outside the scope of this rulemaking.

Another comment addressed the different requirements for reception facilities for garbage under MARPOL and U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) regulations in titles 7 and 9 of the CFR. Garbage subject to APHIS regulations is a subset of garbage regulated under MARPOL. APHIS regulations relate to foreign plant and/or animal waste, including galley waste and any materials that have come in contact with such waste. Requirements for APHIS regulated plant and animal wastes remain unchanged and are not a subject of this rulemaking.

VI. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the 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 final rule has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the final rule has not been reviewed by the Office of Management and Budget.

A regulatory assessment follows:

Regulatory Changes

Prior to Annex V becoming effective in the WCR on May 1, 2011, the rules governing discharge of garbage applicable to the WCR were found at 33 CFR 151.69. That is, the standards found at 33 CFR 151.69 define the regulatory baseline for the 2010 MEPC actions establishing an effective date for the WCR as a special area. The final rule will correct 33 CFR 151 to reflect that the discharge restrictions for special areas found at 33 CFR 151.71 apply to the WCR.

MARPOL Annex V segregates garbage into the following types:

- Plastics, including synthetic ropes, fishing nets, and plastic bags;
- Dunnage (i.e. bracing materials), lining, and packing materials that float;
- Paper, rags, glass, metal, bottles, crockery and similar refuse;
- Paper, rags, glass, etc., comminuted or ground;
- Victual waste not comminuted or ground; and
- Victual waste comminuted or ground.

Sections 151.69 and 151.71 of 33 CFR set the rules for each garbage type by these zones, defined according to distances from the nearest land: less than 3 miles, less than 12 miles, less than 25 miles, and greater than 25 miles.

Below are comparisons of the restrictions in § 151.69 and § 151.71 by garbage type:

- *Plastics:* Both sections prohibit the discharge of plastics anywhere.
- *Dunnage, lining, and packing materials that float:* § 151.69 permits the discharge of dunnage only in the greater than 25 miles zone. However, § 151.71 prohibits the discharge of dunnage anywhere in a special area.
- *Paper, rags, glass, etc. and similar refuse:* § 151.69 permits the discharge of paper etc. only in the 12–25 miles and greater than 25 miles zones. However,

[1] MEPC 60/8/2, IDENTIFICATION AND PROTECTION OF SPECIAL AREAS AND PARTICULARLY. SENSITIVE SEA AREAS ''Wider Caribbean Region'' as a Special Area under MARPOL Annex V. A copy is in the docket.

[2] A copy of the Circular is in the docket.

§ 151.71 prohibits the discharge of paper etc. anywhere in a special area.

• *Ground paper, rags, glass, etc.:* § 151.69 permits the discharge of ground paper etc. outside the less than 3 miles zone. However, § 151.71 prohibits the discharge of ground paper etc. in all zones in a special area.

• *Victual Waste:* Both sections permit the discharge of victual waste in the 12–25 miles and greater than 25 miles zones.

• *Ground Victual Waste:* Both sections permit the discharge of ground victual wastes in all zones other than the less than 3 miles zone.

Table VI.1 shows the provisions of §§ 151.69 and 151.71. The more restrictive provisions of § 151.71 prohibit the discharge of any materials other than Victual Waste or Ground Victual Waste anywhere in the WCR.

TABLE VI.1—COMPARISON OF DISCHARGE RESTRICTIONS IN §§ 151.69 AND 151.71

Material	Section	Miles from nearest land			
		<3	3–12	12–25	>25
Plastics	§ 151.69	No	No	No	No.
	§ 151.71	No	No	No	No.
Dunnage	§ 151.69	No	No	No	Yes.
	§ 151.71	No	No	No	No.
Paper, etc	§ 151.69	No	No	Yes	Yes.
	§ 151.71	No	No	No	No.
Ground Paper, etc	§ 151.69	No	Yes	Yes	Yes.
	§ 151.71	No	No	No	No.
Victual Waste	§ 151.69	No	No	Yes	Yes.
	§ 151.71	No	No	Yes	Yes.
Ground Victual Waste	§ 151.69	No	Yes	Yes	Yes.
	§ 151.71	No	Yes	Yes	Yes.

As the table shows, the differences between §§ 151.69 and 151.71, which identify the changes applicable to any special area after its effective date as established by the IMO, are these additional prohibitions:

• Dunnage in the greater than 25 miles zone;

• Paper, etc. in the 12–25 mile zone and greater than 25 miles zone; and

• Ground paper etc. in the 3–12 mile, 12–25 mile, and greater than 25 miles zones.

In the Background section we described how, at the March 2010 meeting, the IMO's MEPC set the effective date for the WCR special area as May 1, 2011. At that meeting, the United States (and 21 other WCR countries) reported to the IMO that they had adequate port reception facilities at ports and terminals bordering the WCR. However, the United States had adequate port reception facilities established years before the 2010 meeting; the Coast Guard began issuing MARPOL Annex V Certificates of Adequacy (certification that a facility may receive garbage in compliance with MARPOL and APPS) in 2001. Other WCR countries party to MARPOL have been ready since March 2010 or earlier.

Current Industry Practice

The Coast Guard estimates that the IMO's action does not impose an additional burden on the U.S. maritime community. We evaluated the vessels transiting the WCR by different sectors (cruise line, commercial fishing vessel, other commercial vessel, and recreational vessel) and then researched waste management rules and practices in each sector to establish a baseline of current practices. Table VI.2 summarizes the results of our findings for each sector.

TABLE VI.2—SUMMARY OF CURRENT INDUSTRY PRACTICE BY SECTOR

Sector	Garbage type		
	Dunnage	Paper	Ground paper
Cruise Lines	Current practice	Current practice	Current practice.
Commercial Fishing Vessels	Not relevant to this sector	Current practice	Not relevant to this sector.
Other Commercial Vessels	Current practice and inspections	Current practice and inspections	Current practice and inspections.
Recreation vessels	Not relevant to this sector	Current practice and education programs.	Not relevant to this sector.

Below we present our findings for each sector.

1. Cruise Line Sector

The cruise line sector is international in scope and its vessels are subject to the provisions of MARPOL. In June 2001, the International Council of Cruise Lines and its members adopted a set of practices and procedures entitled ''Cruise Industry Waste Management Practices and Procedures.'' [3] Currently, the vessels of the cruise industry are subject to many regulatory regimes, including U.S. laws and regulations; state regulations that may be more strict than U.S. laws, including Florida; [4] the International Convention for Safety of Life at Sea (SOLAS); the International Safety Management Code (ISM); and MARPOL.

The Cruise Lines International Association (CLIA) in 2010 published a document ''CLIA at 35: Steering a Sustainable Course'' [5] that describes its environmental policies. Part II, ''Waste Management,'' states that CLIA's Waste

[3] *Ibid,* p. 6.

[4] Web site of the Cruise Lines International Association, *http://www2.cruising.org/industry/environment.cfm.*

[5] Cruise Lines International Association, *http://www.cruising.org/vacation/news/press_releases/2010/09/celebrating-its-35th-year-clia-releases-new-environmental-report.*

Management Procedures and Policies are incorporated in their members' safety management systems. The document also describes on-board recycling, trash, and garbage management procedures. These include numerous points on the vessel for the collection of recyclable materials from passengers and crew, on-board compacting and storage of aluminum, on-board shredding of paper and cardboard, and the grinding and discharge of food wastes in compliance with MARPOL.

In general, cruise ships are fitted with on-board recycling systems for many materials, other materials are incinerated or brought ashore, and the only solid waste discharged at sea is food waste of either the Victual Waste or Ground Victual Waste type. We concluded that the cruise line sector is currently compliant with the current MARPOL regulations, the APPS, and other U.S. laws. As this final rule will only add the references to the MARPOL restrictions to the CFR, the Coast Guard estimates that there will be no additional costs to this sector.

2. Commercial Fishing Vessel Sector

We compared Annex V restrictions to the characteristics of commercial fishing vessels (CFVs). As noted in Table VI.1, Annex V increased the discharge restrictions for the Dunnage, Paper, and Ground Paper types in special areas.

With respect to the Dunnage type, CFVs, as single-purpose vessels, carry supplies and equipment related to their fishing operations. They do not carry general cargo or bracing, lining, or other materials included in the Dunnage type that are used in freight ships. Thus, the special area restrictions of Annex V, prohibiting the discharge of Dunnage anywhere in the WCR, will not impact CFVs operating out of U.S. ports in the WCR.

CFVs operating out of U.S. ports in the WCR typically engage in short voyages with small crews. This means that they will not generate large waste streams, obviating the need for a specialized paper grinder or shredder like those found on cruise ships. Also, a grinder or shredder would take up space that would otherwise be used for the vessel's fishing operations. Because U.S. CFVs operating in the WCR do not generate ground paper, we believe that the Annex V restrictions on Ground Paper will not result in additional compliance costs for them.

The Annex V restrictions on the Paper type will apply to CFVs. Under the less stringent standards found at § 151.69, discharge of Paper is permitted if greater than 12 miles from the nearest land. As mentioned above, CFV operations consist of short voyages, returning to the same port they left from to deliver their catch. Our previously cited research also indicates that any Paper waste is produced in the galley primarily, commingled and packaged with victual and other waste, and disposed of when returned to home port. Although Annex V prohibits the discharge of Paper waste throughout the WCR, our assessment is that Paper waste on CFVs is currently being commingled with other garbage. The Coast Guards estimates that this final rule will not affect current behavior or result in additional costs to this sector.

3. Other Commercial Vessels

This sector is comprised of commercial vessels other than the cruise ships and commercial fishing vessels (''other commercial vessels''). The other commercial vessels sector includes both foreign-flag and U.S.-flag vessels that transit or operate in the WCR. With regard to foreign-flag vessels, they are engaged in international transits and may transit the other special areas that have been in effect longer than the WCR. For that reason, we conclude that they are already complying with Annex V restrictions and that the WCR coming into effect will not impose any additional costs to them.

To identify the other U.S.-flag commercial vessels that will be affected by the final rule, we extracted from the Marine Information for Safety and Law Enforcement (MISLE) database information about the U.S.-flag vessels as of September 2011. We used the SOLAS certificate documentation to identify the subset of such vessels that have international capability. The resulting population of U.S.-flag other commercial vessels is dominated by offshore supply vessels (OSVs), towing vessels, and freight ships. The population also includes specialty oil service and passenger vessels. OSVs includes vessels supporting near-coastal and harbor work. The towing vessel sector is diverse and includes some vessels that work exclusively in inland waters, some vessels that work in the intracoastal waterways and some vessels that remain within 3 miles of land.

We analyzed the characteristics of this population of other commercial vessels with respect to existing regulatory requirements and we found that all of these vessels are subject to one or more compliance regimes. All of these vessels are in at least one of the following categories: (1) Coast Guard inspected vessels, or (2) uninspected vessels which have voluntarily adopted an audit-based safety management system (SMS) such as the IMO's International Safety Management Code (ISM) or the American Waterways Operator's Responsible Carrier Program (RCP). Below, we discuss the garbage management requirements under these compliance regimes and summarize our findings.

Coast Guard Inspected Vessels

Coast Guard inspected vessels are already required to comply with the requirements of MARPOL. Under 33 CFR 151.61, the Coast Guard may inspect any ''ship subject to inspection'' for compliance with the APPS regulations. APPS regulations include the waste management plan requirements of 33 CFR 151.57. Section 151.57 requires compliance with MARPOL and waste management plans for vessels in a defined group; that group includes all of the inspected vessels in the other commercial vessels population. Compliance with these requirements is part of the Coast Guard safety and security inspection regime.

Vessels With Audit-Based Safety Management Systems

All of the vessels which are not subject to Coast Guard inspection, but are part of the other commercial vessels population, have voluntarily adopted one of the two major audit-based safety management system (SMS): Either the IMO's International Safety Management Code (ISM), or the American Waterways Operator's Responsible Carrier Program (RCP). Both the ISM and the RCP require that ships adhere to applicable laws and regulations, including MARPOL Annex V. Each regime also includes requirements relating to sanitation. For example, the RCP's section II.D, ''Environmental Policy and Procedures,'' [6] requires each vessel to have procedures and documentation for garbage disposal, handling of waste oil, sanitary systems and handling of sewage. Similarly, the ISM Code states that one of its objectives is ''avoidance of damage to the environment, in particular to the marine environment and to property,'' [7] and that a ship's safety management system should ''assess all identified risks to its ships, personnel and the environment and establish appropriate safeguards.''

Each company subject to the ISM or RCP documents the specific processes and policies its vessels will follow to comply with all of the applicable SMS's

[6] American Waterways Operators, *http://www.americanwaterways.com/commitment_safety/RCP.pdf.*

[7] International Maritime Organization, *http://www.imo.org/ourwork/humanelement/safetymanagement/pages/ismcode.aspx.*

requirements. Both the ISM and the RCP use third-party auditors to ensure that the vessels and company policies are in compliance with the applicable safety regimes. Thus, these compliance regimes ensure that ships adhere to current federal rules, including MARPOL Annex V and APPS, as well as additional regime-specific sanitation and garbage management procedures.

Summary of Findings

We conclude that these commercial vessels currently meet the garbage management requirements of the final rule. The Coast Guard therefore estimates that there will be no additional costs to these vessels.

4. Recreational Vessels

As described earlier in this section, the passing of the effective date of the WCR special area increased the restrictions on the discharge of the Dunnage, Ground Paper, and Paper types. The Dunnage type would not apply to recreational vessels, because they do not carry containers or other general cargo that would require the bracing and lining materials that comprise this garbage type.

With respect to Ground Paper, Coast Guard experience indicates that recreational vessels do not have space for a specialized shredder or grinder to process the materials in the Ground Paper type. Instead, this material is commingled with other garbage types. Our assessment then is that the Ground Paper type is not relevant to the recreational vessel sector.

The remaining garbage type that has a new restriction in the WCR is Paper. Once the WCR special area came into effect, ships were prohibited from discharging Paper anywhere in the WCR. Before the WCR special area came in to effect, such discharge was allowed 12 miles or more from the nearest land.

To address pollution on the waterways, which may be from either shoreside or vessel sources, the recreational boating community is actively engaged in education, which we refer to as ''clean water/marina programs,'' collectively. These programs are focused on comprehensive waste management actions and already incorporate the restrictions of Annex V. The list below summarizes some of the programs pursued by leading recreational boating organizations:

- BoatU.S. Foundation: The BoatU.S. Foundation promotes safety and clean water. Its clean water program, called ''Stash the Trash'', advises boaters to know and follow the applicable laws and regulations, throw no trash of any kind overboard, return everything to land that they take out to sea, and pick up trash on the waters and in marinas.[8]
- U.S. Power Squadron (USPS): The USPS has a national Environmental Committee, whose goals include educating boaters about applicable laws, regulations, and good environmental management practices; and promoting activities to clean up waterways.[9]
- Association of Marina Industries (AMI): The AMI's Clean Marina program ''is a voluntary compliance program that stresses environmental and managerial best management practices that exceed regulatory requirements * * * A typical Clean Marina program will have components that cover marina [siting] and design considerations, marina management, emergency planning, petroleum control, sewage and gray water, waste containment and disposal, storm water management, habitat and species protection and boater education.'' [10] Florida,[11] Louisiana,[12] and Texas [13] have Clean Marina programs that are sponsored by state agencies.
- American Boating Association (ABA): The Clean Trash Discharge part of the ABA's Clean Boating program includes information about the Marine Plastic Pollution Research and Control Act and MARPOL Annex V, and advocates proper stowage of all articles and return of everything taken aboard.[14]

For the recreational boater, the application of increased restrictions in the WCR, by itself, is narrow, because it only affects the Paper type in the two farthest zones. Moreover, because clean water/marina programs are already advocating the practices consistent with the increased restrictions described in 33 CFR 151.71, we conclude that the publication of this final rule will not require recreational boaters to learn or adopt any new behavior. The Coast Guard estimates that there will be no additional costs to the owners of recreational vessels.

Summary

In both the commercial and recreational sectors, we estimate current garbage and waste management practices are already consistent with the changes enacted by IMO. These include recycling on the larger vessels and stowage and onshore disposal for vessels of all sizes and types. In summary, the Coast Guard estimates that there will be no additional costs to the public by this final rule.

Benefits

Without the promulgation of this final rule, discrepancies between the CFR and the requirements found in the APPS and MARPOL would continue and provide inconsistent information to operators of industrial and recreational vessels that transit the WCR.

The primary benefit of this rule is to provide consistent information on MARPOL Annex V special area requirements in order to increase the regulated community's awareness of the requirements. The secondary benefit is more efficient regulations through greater consistency between U.S. domestic regulations and MARPOL Annex V.

B. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. However, when an agency is not required to publish an NPRM for a rule, the RFA does not require the agency to prepare a regulatory flexibility analysis. The Coast Guard was not required to publish an NPRM for this rule for the reasons stated in Section II, ''Regulatory History.'' Therefore, the Coast Guard is not required to publish a regulatory flexibility analysis.

C. 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 the rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

[8] BoatU.S. Foundation, *http://www.boatus.com/foundation/cleanwater/stashtrash.asp.*

[9] U.S. Power Squadron, *http://www.usps.org/national/envcom/.*

[10] Association of Marina Industries, *http://marinaassociation.org/government/clean-marina.*

[11] State of Florida, *http://www.dep.state.fl.us/cleanmarina/.*

[12] State of Louisiana, *http://dnr.louisiana.gov* (enter clean marinas in the search tool).

[13] State of Texas, *http://www.cleanmarinas.org/.*

[14] American Boating Association, *http://www.americanboating.org/clean.asp.*

D. Collection of Information

This rule does not call for any new collections of information, as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order. States do not have the authority to regulate special areas under MARPOL Annex V, including the Wider Caribbean Region special area. Therefore, we have determined that the final rule does not have implications for federalism.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction and under section 6(b) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48244, July 23, 2002). This rule involves regulations which are editorial or procedural, in that the regulatory change merely restates an already-existing obligation in a more convenient place. Accordingly, paragraph 34(a) of the Instruction applies. This rule also involves regulations mandated by Congress in APPS; congressionally mandated regulations designed to improve or protect the environment are excluded under section 6(b) of the Appendix. 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 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 1. The authority citation for part 151 continues to read:

Authority: 33 U.S.C. 1321, 1902, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); Pub. L. 108–293 (118 Stat. 1063), Sec. 623; E.O. 12777, 3 CFR, 1991 Comp. p. 351; DHS Delegation No. 0170.1, sec. 2(77).

Subpart A—Implementation of MARPOL 73/78 and the Protocol on Environmental Protection to the Antarctic Treaty as It Pertains to Pollution From Ships

§ 151.53 [Amended]

■ 2. Amend § 151.53(c) by adding the words ''Wider Caribbean Region, the'' before the word ''Mediterranean''; adding the word ''the'' before the word ''Baltic''; and adding a comma after the word ''Gulfs.''

■ 3. Revise Appendix A to §§ 151.51 through 151.77 to read as follows:

Appendix A to §§ 151.51 Through 151.77—Summary of Garbage Discharge Restrictions

Garbage type	All vessels except fixed or floating platforms and associated vessels		Fixed or floating platforms & assoc. vessels [3] (33 CFR 151.73)
	Outside special areas (33 CFR 151.69)	In special areas [2] (33 CFR 151.71)	
Plastics—includes synthetic ropes and fishing nets and plastic bags.	Disposal prohibited (33 CFR 151.67).	Disposal prohibited (33 CFR 151.67).	Disposal prohibited (33 CFR 151.67).
Dunnage, lining and packing materials that float.	Disposal prohibited less than 25 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited (33 CFR 151.71)..	Disposal prohibited.
Paper, rags, glass, metal bottles, crockery and similar refuse.	Disposal prohibited less than 12 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited (33 CFR 151.71).	Disposal prohibited.
Paper, rags, glass, etc. comminuted or ground [1].	Disposal prohibited less than 3 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited (33 CFR 151.71).	Disposal prohibited.
Victual waste not comminuted or ground.	Disposal prohibited less than 12 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited less than 12 miles from nearest land.	Disposal prohibited.
Victual waste comminuted or ground [1].	Disposal prohibited less than 3 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited less than 12 miles from nearest land, except in the Wider Caribbean Region special area, where disposal is prohibited less than 3 miles from nearest land.	Disposal prohibited less than 12 miles from nearest land and in the navigable waters of the U.S.
Mixed garbage types [4]	See Note 4	See Note 4	See Note 4.

Note 1: Comminuted or ground garbage must be able to pass through a screen with a mesh size no larger than 25 mm. (1 inch) (33 CFR 151.75).

Note 2: Special areas under Annex V are the Mediterranean, Baltic, Black, Red, and North Seas areas, the Gulfs area, and the Wider Caribbean Region. (33 CFR 151.53).

Note 3: Fixed or floating platforms and associated vessels includes all fixed or floating platforms engaged in exploration, exploitation or associated offshore processing of seabed mineral resources, and all ships within 500m of such platforms.

Note 4: When garbage is mixed with other harmful substances having different disposal or discharge requirements, the more stringent disposal restrictions shall apply.

Dated: March 16, 2012.

J.G Lantz,

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

[FR Doc. 2012–7787 Filed 3–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0254]

RIN 1625–AA11

Regulated Navigation Area, Zidell Waterfront Property, Willamette River, OR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) at the Zidell Waterfront Property located on the Willamette River in Portland, Oregon. This RNA is necessary to preserve the integrity of an engineered sediment cap as part of an Oregon Department of Environmental Quality (DEQ) required remedial action. This RNA will prohibit activities that could disturb or damage the engineered sediment cap.

DATES: This rule is effective May 2, 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–2011–0254 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0254 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 rule, call or email BM1 Silvestre Suga III, Waterways Management Division, Coast Guard Sector Columbia River, telephone 503–240–9319, email *Silvestre.G.Suga@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 August 8, 2011, we published a notice of proposed rulemaking (NPRM) titled Regulated Navigation Area, Zidell Waterfront Property, Willamette River, OR, in the **Federal Register** (76 FR 48070). We received no comments on the proposed rule. There were no requests made for a public meeting regarding this rule and none were held. No other documents have been published for this rulemaking.

Basis and Purpose

The Zidell Waterfront Property is placing an engineered sediment cap over contaminated sediments adjacent to the west bank of the Willamette River between approximate river miles 13.5 and 14.2 as part of an Oregon Department of Environmental Quality (DEQ) required remedial action. Geographically this location starts at approximately the west bank of the Marquam Bridge and continues southerly, along the west bank of the Willamette River to the North end of Ross Island.

The engineered sediment cap is designed to be compatible with normal port operations, but could be damaged by other maritime activities including anchoring, dragging, dredging, grounding of large vessels, deployment of barge spuds, etc. Such damage could disrupt the function or impact the effectiveness of the cap to contain the underlying contaminated sediment and shoreline soil in these areas. As such,

this RNA will help ensure the cap is protected and will do so by prohibiting certain maritime activities that could disturb or damage it.

The engineered sediment cap will also reduce the depth of the water close to the west bank of the Willamette River and, as a result, may limit some vessels from using that area of the river.

Background

The location of the engineered sediment cap was previously used for industrial activities related to shipbuilding and dismantling, scrap metal operations, wire burning, aluminum smelting, and housing construction. It was determined that the site soils and sediments contain contaminants, including metals, petroleum hydrocarbons and associated polycyclic aromatic hydrocarbons, polychlorinated biphenyls, and tributyltin, which present unacceptable levels of risk to human and ecological receptors. Following extensive analysis, the engineered sediment cap was deemed appropriate by the Oregon DEQ because the engineered sediment cap will protect human and ecological receptors from exposure to contamination, and the establishment of this RNA prevents activities that could result in an unacceptable threat to public health and the environment.

Discussion of Comments and Changes

The Coast Guard received no comments during the comment period such that no changes have been made to the rule.

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. The modification of the existing anchorage does not have any significant costs.

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: The owners or operators of vessels operating in the area covered by the RNA. The RNA will not have a significant economic impact on a substantial number of small entities, however, because the RNA is limited in size and will not limit vessels from transiting or using the waters covered, except for activities that may damage the engineered sediment cap. 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), 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 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

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 that 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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 § 165.1337 to read as follows:

§ 165.1337 Regulated Navigation Area, Zidell Waterfront Property, Willamette River, OR.

(a) *Regulated Navigation Area.* The following area is a regulated navigation area: All waters within the area bounded by the following points: 45°29′55.12″ N/122°40′2.19″ W; thence continuing to 45°29′55.14″ N/122°39′59.36″ W; thence continuing to 45°29′56.30″ N/122°39 59.09″ W; thence continuing to 45°29′57.51″ N/122°39′59.64″ W; thence continuing to 45°29′58.72″ N/122°39′59.64″ W; thence continuing to 45°30′0.52″ N/122°39′59.94″ W; thence continuing to 45°30′1.95″ N/122°40′0.46″ W; thence continuing to 45°30′3.44″ N/122°40′0.78″ W; thence continuing to 45°30’ 4.87″ N/122°40’ 0.95″ W; thence continuing to 45°30′7.33″ N/122°40′1.80″ W; thence continuing to 45°30′8.11″ N/122°40′2.69″ W; thence continuing to 45°30′8.83″ N/122°40′3.81″ W; thence continuing to 45°30′13.06″ N/122°40′5.39″ W; thence continuing to 45°30′15.30″ N/122°40′6.93″ W; thence continuing to 45°30′17.78″ N/122°40′8.16″ W; thence continuing to 45°30′20.53″ N/122°40′9.07″ W; thence continuing to 45°30′20.90″ N/122°40′11.52″ W; thence continuing to 45°30′24.04″ N/122°40′12.53″ W; thence continuing to 45°30′23.79″ N/122°40′14.87″ W; thence continuing along the shoreline to 45°29′55.12″ N/122°40′2.19″ W. Geographically the regulated navigation area covers all waters adjacent to the Zidell Waterfront Property on the Willamette River extending from the west bank of the river out 200 to 400 feet into the river depending on the exact location between approximate river mile 14.2 near the Ross Island Bridge and approximate river mile 13.5 near the Marquam Bridge.

(b) *Regulations.* All vessels are prohibited from anchoring, dragging, dredging, or trawling in the regulated navigation area established by this section. See 33 CFR part 165, subpart B, for additional information and requirements.

Dated: December 30, 2011.

K.A. Taylor,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 2012–7784 Filed 3–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8223]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program

regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Pennsylvania:				
Armstrong, Township of, Indiana County.	421708	July 7, 1975, Emerg; April 16, 1990, Reg; April 3, 2012, Susp.	April 3, 2012	April 3, 2012.
Banks, Township of, Indiana County	422435	October 16, 1981, Emerg; September 10, 1984, Reg; April 3, 2012, Susp.	*.....do	Do.
Black Lick, Township of, Indiana County.	421709	March 1, 1977, Emerg; August 19, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Blairsville, Borough of, Indiana County	420495	June 2, 1976, Emerg; June 5, 1985, Reg; April 3, 2012, Susp.	.....do	Do.
Brush Valley, Township of, Indiana County.	421710	March 23, 1977, Emerg; August 19, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Burrell, Township of, Indiana County	421213	December 4, 1975, Emerg; August 19, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Canoe, Township of, Indiana County	421713	February 18, 1977, Emerg; August 1, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Center, Township of, Indiana County	420496	August 22, 1973, Emerg; February 15, 1978, Reg; April 3, 2012, Susp.	.....do	Do.
Cherry Tree, Borough of, Indiana County.	420497	April 29, 1975, Emerg; June 17, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Cherryhill, Township of, Indiana County	421714	April 8, 1976, Emerg; April 1, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Clymer, Borough of, Indiana County	420498	January 15, 1974, Emerg; September 15, 1977, Reg; April 3, 2012, Susp.	.....do	Do.
Conemaugh, Township of, Indiana County.	421715	November 18, 1985, Emerg; June 17, 1986, Reg; April 3, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Creekside, Borough of, Indiana County	420499	September 10, 1975, Emerg; December 5, 1989, Reg; April 3, 2012, Susp.	.....do	Do.
East Mahoning, Township of, Indiana County.	422436	March 16, 1977, Emerg; August 1, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
East Wheatfield, Township of, Indiana County.	421716	March 7, 1977, Emerg; August 2, 1990, Reg; April 3, 2012, Susp.	.....do	Do.
Grant, Township of, Indiana County	421717	May 22, 1981, Emerg; August 1, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Green, Township of, Indiana County	421718	February 18, 1976, Emerg; December 5, 1989, Reg; April 3, 2012, Susp.	.....do	Do.
Homer City, Borough of, Indiana County.	420500	April 5, 1973, Emerg; September 30, 1977, Reg; April 3, 2012, Susp.	.....do	Do.
Indiana, Borough of, Indiana County	420501	January 27, 1977, Emerg; May 19, 1987, Reg; April 3, 2012, Susp.	.....do	Do.
Marion Center, Borough of, Indiana County.	420503	September 29, 1975, Emerg; September 1, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Montgomery, Township of, Indiana County.	421719	May 16, 1979, Emerg; August 1, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
North Mahoning, Township of, Indiana County.	422438	April 25, 1977, Emerg; September 24, 1984, Reg; April 3, 2012, Susp.	.....do	Do.
Pine, Township of, Indiana County	421720	October 4, 1977, Emerg; March 1, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Plumville, Borough of, Indiana County ..	420504	March 21, 1977, Emerg; September 24, 1984, Reg; April 3, 2012, Susp.	.....do	Do.
Rayne, Township of, Indiana County	421721	March 22, 1977, Emerg; August 1, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Saltsburg, Borough of, Indiana County	420505	March 7, 1977, Emerg; September 24, 1984, Reg; April 3, 2012, Susp.	.....do	Do.
Shelocta, Borough of, Indiana County ..	420506	October 7, 1975, Emerg; December 5, 1989, Reg; April 3, 2012, Susp.	.....do	Do.
South Mahoning, Township of, Indiana County.	422439	June 28, 1979, Emerg; September 24, 1984, Reg; April 3, 2012, Susp.	.....do	Do.
Washington, Township of, Indiana County.	421722	December 22, 1981, Emerg; April 16, 1990, Reg; April 3, 2012, Susp.	.....do	Do.
West Wheatfield, Township of, Indiana County.	421724	May 13, 1977, Emerg; April 2, 1990, Reg; April 3, 2012, Susp.	.....do	Do.
White, Township of, Indiana County	421725	February 26, 1976, Emerg; May 19, 1987, Reg; April 3, 2012, Susp.	.....do	Do.
Young, Township of, Indiana County	421726	August 17, 1976, Emerg; August 1, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Region IV				
Alabama:				
Livingston, City of, Sumter County	010195	April 26, 1974, Emerg; August 15, 1980, Reg; April 3, 2012, Susp.	.....do	Do.
Sumter County, Unincorporated Areas.	010194	March 22, 1979, Emerg; August 1, 1987, Reg; April 3, 2012, Susp.	.....do	Do.
York, City of, Sumter County	010196	January 7, 1975, Emerg; August 1, 1980, Reg; April 3, 2012, Susp.	.....do	Do.
North Carolina:				
Buncombe County, Unincorporated Areas..	370031	January 28, 1974, Emerg; August 1, 1980, Reg; April 3, 2012, Susp.	.....do	Do.
Canton, Town of, Haywood County	370121	July 2, 1973, Emerg; February 2, 1977, Reg; April 3, 2012, Susp.	.....do	Do.
Clyde, Town of, Haywood County	370122	May 20, 1974, Emerg; December 1, 1983, Reg; April 3, 2012, Susp.	.....do	Do.
Haywood County, Unincorporated Areas..	370120	June 9, 1975, Emerg; July 15, 1984, Reg; April 3, 2012, Susp.	.....do	Do.
Maggie Valley, Town of, Haywood County.	370389	August 8, 1979, Emerg; April 17, 1984, Reg; April 3, 2012, Susp.	.....do	Do.
Waynesville, Town of, Haywood County	370124	July 2, 1975, Emerg; January 6, 1983, Reg; April 3, 2012, Susp.	.....do	Do.
Region V				
Michigan:				
Akron, Township of, Tuscola County	260207	October 14, 1975, Emerg; January 1, 1992, Reg; April 3, 2012, Susp.	.....do	Do.
Ann Arbor, Charter Township of, Washtenaw County.	260535	September 26, 1977, Emerg; June 18, 1980, Reg; April 3, 2012, Susp.	.....do	Do.
Ann Arbor, City of, Washtenaw County	260213	April 19, 1973, Emerg; June 15, 1982, Reg; April 3, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Augusta, Township of, Washtenaw County.	260627	August 12, 1975, Emerg; September 4, 1985, Reg; April 3, 2012, Susp.	.....do	Do.
Caro, City of, Tuscola County	260597	October 20, 2008, Emerg; August 14, 2009, Reg; April 3, 2012, Susp.	.....do	Do.
Columbia, Township of, Tuscola County	261242	August 30, 2010, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
Dexter, Township of, Washtenaw County.	260536	August 16, 1976, Emerg; February 19, 1987, Reg; April 3, 2012, Susp.	.....do	Do.
Indianfields, Township of, Tuscola County.	260526	October 29, 1982, Emerg; February 1, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Juniata, Township of, Tuscola County ..	261007	December 22, 1997, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
Manchester, Village of, Washtenaw County.	260316	August 26, 1975, Emerg; June 15, 1982, Reg; April 3, 2012, Susp.	.....do	Do.
Northfield, Township of, Washtenaw County.	260635	September 5, 1975, Emerg; November 16, 1990, Reg; April 3, 2012, Susp.	.....do	Do.
Novesta, Township of, Tuscola County	261002	October 27, 1997, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
Pittsfield, Charter Township of, Washtenaw County.	260623	July 17, 1975, Emerg; August 2, 1982, Reg; April 3, 2012, Susp.	.....do	Do.
Salem, Township of, Washtenaw County.	260636	September 5, 1975, Emerg; April 1, 1988, Reg; April 3, 2012, Susp.	.....do	Do.
Saline, City of, Washtenaw County	260215	May 19, 1975, Emerg; January 18, 1984, Reg; April 3, 2012, Susp.	.....do	Do.
Scio, Township of, Washtenaw County	260537	N/A, Emerg; August 28, 1989, Reg; April 3, 2012, Susp.	.....do	Do.
Superior, Township of, Washtenaw County.	260540	December 21, 2010, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
Tuscola, Township of, Tuscola County	260527	June 16, 1986, Emerg; December 18, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Vassar, City of, Tuscola County	260208	December 19, 1973, Emerg; April 1, 1977, Reg; April 3, 2012, Susp.	.....do	Do.
Vassar, Township of, Tuscola County ..	261012	December 22, 1997, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
Wisner, Township of, Tuscola County ..	260209	May 21, 1973, Emerg; May 15, 1978, Reg; April 3, 2012, Susp.	.....do	Do.
York, Charter Township of, Washtenaw County.	260541	October 29, 1998, Emerg; August 31, 2011, Reg; April 3, 2012, Susp.	.....do	Do.
Ypsilanti, Charter Township of, Washtenaw County.	260542	March 20, 1978, Emerg; June 15, 1981, Reg; April 3, 2012, Susp.	.....do	Do.
Ypsilanti, City of, Washtenaw County ...	260216	May 8, 1975, Emerg; July 16, 1980, Reg; April 3, 2012, Susp.	.....do	Do.
Minnesota:				
Dennison, City of, Rice County	270713	December 21, 1978, Emerg; September 18, 1985, Reg; April 3, 2012, Susp.	.....do	Do.
Dundas, City of, Rice County	270403	September 29, 1975, Emerg; April 15, 1982, Reg; April 3, 2012, Susp.	.....do	Do.
Faribault, City of, Rice County	270404	April 19, 1974, Emerg; November 1, 1978, Reg; April 3, 2012, Susp.	.....do	Do.
Hinckley, City of, Pine County	270347	September 20, 1974, Emerg; September 4, 1987, Reg; April 3, 2012, Susp.	.....do	Do.
Kingston, City of, Meeker County	270284	July 23, 1974, Emerg; July 3, 1985, Reg; April 3, 2012, Susp.	.....do	Do.
Litchfield, City of, Meeker County	270285	July 18, 1975, Emerg; February 15, 1991, Reg; April 3, 2012, Susp.	.....do	Do.
Meeker County, Unincorporated Areas.	270280	April 22, 1974, Emerg; September 1, 1988, Reg; April 3, 2012, Susp.	.....do	Do.
Morristown, City of, Rice County	270405	N/A, Emerg; August 16, 2011, Reg; April 3, 2012, Susp.	.....do	Do.
Pine City, City of, Pine County	270348	March 26, 1975, Emerg; December 1, 1981, Reg; April 3, 2012, Susp.	.....do	Do.
Pine County, Unincorporated Areas.	270704	N/A, Emerg; April 7, 1992, Reg; April 3, 2012, Susp.	.....do	Do.
Rice County, Unincorporated Areas.	270646	May 30, 1974, Emerg; February 4, 1981, Reg; April 3, 2012, Susp.	.....do	Do.
Rock Creek, City of, Pine County	270349	May 6, 1975, Emerg; July 6, 1984, Reg; April 3, 2012, Susp.	.....do	Do.
Sandstone, City of, Pine County	270351	May 14, 1975, Emerg; January 6, 1983, Reg; April 3, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Willow River, City of, Pine County	270353	April 26, 1974, Emerg; July 1, 1987, Reg; April 3, 2012, Susp.	.....do	Do.
Region VI				
Louisiana:				
Albany, Village of, Livingston Parish.	220114	October 14, 1983, Emerg; October 14, 1983, Reg; April 3, 2012, Susp.	.....do	Do.
Clinton, Town of, East Feliciana Parish.	220249	June 3, 1976, Emerg; December 4, 1979, Reg; April 3, 2012, Susp.	.....do	Do.
Denham Springs, City of, Livingston Parish..	220116	June 25, 1975, Emerg; October 15, 1981, Reg; April 3, 2012, Susp.	.....do	Do.
East Feliciana Parish, Unincorporated Areas..	220364	October 2, 2006, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
French Settlement, Village of, Livingston Parish..	220117	May 25, 1983, Emerg; October 15, 1985, Reg; April 3, 2012, Susp.	.....do	Do.
Jackson, Town of, East Feliciana Parish..	220333	February 26, 1976, Emerg; June 4, 1980, Reg; April 3, 2012, Susp.	.....do	Do.
Killian, Village of, Livingston Parish.	220355	October 26, 1977, Emerg; August 1, 1987, Reg; April 3, 2012, Susp.	.....do	Do.
Livingston, Town of, Livingston Parish.	220118	June 21, 1978, Emerg; April 15, 1979, Reg; April 3, 2012, Susp.	.....do	Do.
Livingston Parish, Unincorporated Areas..	220113	May 20, 1977, Emerg; September 30, 1988, Reg; April 3, 2012, Susp.	.....do	Do.
Norwood, Village of, East Feliciana Parish..	220302	N/A, Emerg; January 21, 2011, Reg; April 3, 2012, Susp.	.....do	Do.
Port Vincent, Village of, Livingston Parish..	220119	May 17, 1977, Emerg; August 16, 1988, Reg; April 3, 2012, Susp.	.....do	Do.
Slaughter, Town of, East Feliciana Parish..	220259	October 4, 2007, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
Springfield, Town of, Livingston Parish.	220120	N/A, Emerg; March 24, 1998, Reg; April 3, 2012, Susp.	.....do	Do.
Walker, Town of, Livingston Parish.	220121	June 26, 1975, Emerg; February 17, 1982, Reg; April 3, 2012, Susp.	.....do	Do.
Oklahoma:				
Alex, Town of, Grady County	400063	August 20, 1976, Emerg; February 2, 1983, Reg; April 3, 2012, Susp.	.....do	Do.
Altus, City of, Jackson County	400072	February 20, 1975, Emerg; July 2, 1980, Reg; April 3, 2012, Susp.	.....do	Do.
Bessie, Town of, Washita County	400261	July 21, 1983, Emerg; May 1, 1985, Reg; April 3, 2012, Susp.	.....do	Do.
Blair, Town of, Jackson County	400348	November 22, 1976, Emerg; August 3, 1982, Reg; April 3, 2012, Susp.	.....do	Do.
Blanchard, City of, Grady County	400101	February 17, 1976, Emerg; January 3, 1986, Reg; April 3, 2012, Susp.	.....do	Do.
Catoosa, City of, Rogers County	400185	January 8, 1976, Emerg; August 1, 1980, Reg; April 3, 2012, Susp.	.....do	Do.
Chelsea, City of, Rogers County	400187	March 18, 1986, Emerg; September 1, 1987, Reg; April 3, 2012, Susp.	.....do	Do.
Chickasha, City of, Grady County	400234	January 15, 1974, Emerg; September 30, 1980, Reg; April 3, 2012, Susp.	.....do	Do.
Claremore, City of, Rogers County	405375	November 6, 1970, Emerg; August 27, 1971, Reg; April 3, 2012, Susp.	.....do	Do.
Clinton, City of, Washita County	400054	November 25, 1974, Emerg; July 2, 1980, Reg; April 3, 2012, Susp.	.....do	Do.
Collinsville, City of, Rogers County	400360	November 21, 1975, Emerg; July 2, 1981, Reg; April 3, 2012, Susp.	.....do	Do.
Colony, Town of, Washita County	400253	September 10, 1984, Emerg; September 10, 1984, Reg; April 3, 2012, Susp.	.....do	Do.
Corn, Town of, Washita County	400225	November 22, 2002, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
Elmore City, City of, Garvin County	400374	December 19, 1977, Emerg; July 20, 1982, Reg; April 3, 2012, Susp.	.....do	Do.
Granite, Town of, Greer County	400066	September 17, 1975, Emerg; May 25, 1978, Reg; April 3, 2012, Susp.	.....do	Do.
Greer County, Unincorporated Areas.	400544	October 3, 1994, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
Harmon County, Unincorporated Areas.	400545	January 27, 1995, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
Hollis, City of, Harmon County	400068	June 18, 1975, Emerg; August 5, 1985, Reg; April 3, 2012, Susp.	.....do	Do.

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Inola, Town of, Rogers County	400456	April 5, 1976, Emerg; July 16, 1987, Reg; April 3, 2012, Susp.	.....do	Do.
Jackson County, Unincorporated Areas.	400480	May 31, 1995, Emerg; June 16, 1999, Reg; April 3, 2012, Susp.	.....do	Do.
Lindsay, City of, Garvin County	400245	February 26, 1975, Emerg; January 6, 1983, Reg; April 3, 2012, Susp.	.....do	Do.
Mangum, City of, Greer County	400067	June 4, 1975, Emerg; May 29, 1979, Reg; April 3, 2012, Susp.	.....do	Do.
Maysville, Town of, Garvin County	400402	February 27, 1978, Emerg; September 30, 1981, Reg; April 3, 2012, Susp.	.....do	Do.
New Cordell, City of, Washita County	400224	July 7, 1975, Emerg; May 2, 1983, Reg; April 3, 2012, Susp.	.....do	Do.
Ninnekah, Town of, Grady County	405382	January 12, 1984, Emerg; February 15, 1985, Reg; April 3, 2012, Susp.	.....do	Do.
Olustee, Town of, Jackson County	400430	November 16, 1976, Emerg; August 3, 1982, Reg; April 3, 2012, Susp.	.....do	Do.
Oologah, Town of, Rogers County	400189	June 16, 1978, Emerg; March 1, 1987, Reg; April 3, 2012, Susp.	.....do	Do.
Owasso, City of, Rogers County	400210	April 26, 1974, Emerg; July 2, 1981, Reg; April 3, 2012, Susp.	.....do	Do.
Paoli, Town of, Garvin County	400317	December 2, 2004, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
Pauls Valley, City of, Garvin County	400246	December 9, 1976, Emerg; September 17, 1980, Reg; April 3, 2012, Susp.	.....do	Do.
Rogers County, Unincorporated Areas.	405379	November 6, 1970, Emerg; November 5, 1971, Reg; April 3, 2012, Susp.	.....do	Do.
Rush Springs, Town of, Grady County	400064	May 1, 1975, Emerg; July 3, 1985, Reg; April 3, 2012, Susp.	.....do	Do.
Sentinel, Town of, Washita County	400442	July 15, 1983, Emerg; July 3, 1985, Reg; April 3, 2012, Susp.	.....do	Do.
Stratford, Town of, Garvin County	400416	January 26, 1978, Emerg; November 15, 1985, Reg; April 3, 2012, Susp.	.....do	Do.
Tulsa, City of, Rogers County	405381	November 20, 1970, Emerg; August 13, 1971, Reg; April 3, 2012, Susp.	.....do	Do.
Tuttle, City of, Grady County	400443	February 10, 1987, Emerg; November 1, 1989, Reg; April 3, 2012, Susp.	.....do	Do.
Verden, Town of, Grady County	400248	August 19, 1976, Emerg; October 26, 1982, Reg; April 3, 2012, Susp.	.....do	Do.
Washita County, Unincorporated Areas.	400223	December 6, 1993, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
Wynnewood, City of, Garvin County	400251	March 24, 1978, Emerg; January 15, 1988, Reg; April 3, 2012, Susp.	.....do	Do.
Texas:				
Atlanta, City of, Cass County	480117	June 20, 1974, Emerg; May 19, 1981, Reg; April 3, 2012, Susp.	.....do	Do.
Bloomburg, Town of, Cass County	480732	August 25, 2010, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.
Cass County, Unincorporated Areas.	480730	July 12, 2001, Emerg; October 1, 2007, Reg; April 3, 2012, Susp.	.....do	Do.
Castroville, City of, Medina County	480932	December 22, 1975, Emerg; May 1, 1979, Reg; April 3, 2012, Susp.	.....do	Do.
Devine, City of, Medina County	480690	November 14, 1973, Emerg; April 15, 1977, Reg; April 3, 2012, Susp.	.....do	Do.
Domino, Town of, Cass County	481515	N/A, Emerg; March 24, 2010, Reg; April 3, 2012, Susp.	.....do	Do.
Grimes County, Unincorporated Areas.	481173	July 10, 1978, Emerg; August 1, 1988, Reg; April 3, 2012, Susp.	.....do	Do.
Hondo, City of, Medina County	480474	July 10, 1975, Emerg; December 1, 1978, Reg; April 3, 2012, Susp.	.....do	Do.
Hughes Springs, City of, Cass County	480734	July 1, 1991, Emerg; January 1, 1992, Reg; April 3, 2012, Susp.	.....do	Do.
Navasota, City of, Grimes County	480265	March 17, 1977, Emerg; February 4, 1988, Reg; April 3, 2012, Susp.	.....do	Do.
Queen City, City of, Cass County	481117	October 5, 2010, Emerg; N/A, Reg; April 3, 2012, Susp.	.....do	Do.

*-do-=Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: March 26, 2012.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–7752 Filed 3–30–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 100323162–2182–03]

RIN 0648–XV30

Endangered and Threatened Species; Range Extension for Endangered Central California Coast Coho Salmon

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

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), are issuing a final rule under the Endangered Species Act (ESA) of 1973, as amended, that redefines the geographic range of the endangered Central California Coast (CCC) coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU) to include all naturally spawned populations of coho salmon that occur in Soquel and Aptos creeks. Information supporting this boundary change includes recent observations of coho salmon in Soquel Creek, genetic analysis of these fish indicating they are derived from other nearby populations in the ESU, and the presence of freshwater habitat conditions and watershed processes in Soquel and Aptos Creeks that are similar to those found in closely adjacent watersheds that support coho salmon populations that are part of the ESU. We have also reassessed the status of this ESU throughout its redefined range and conclude that it continues to be endangered.

DATES: Effective June 1, 2012.

ADDRESSES: Assistant Regional Administrator, Protected Resources Division, Attn: Craig Wingert, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 5200, Long Beach, CA, 90802–4213.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, NMFS, Southwest Region, (562) 980–4021; or Dwayne Meadows, NMFS, Office of Protected Resources, (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

The Central California Coast (CCC) coho salmon Evolutionarily Significant Unit (ESU) was listed as a threatened species on October 31, 1996 (61 FR 56138) and subsequently reclassified as an endangered species on June 28, 2005 (70 FR 37160). At the time it was reclassified as endangered in 2005, the ESU was defined to include all naturally spawning populations of coho salmon found in coastal watersheds from Punta Gorda in northern California southward to and including the San Lorenzo River in central California, as well as four artificially propagated stocks of coho salmon. For more information on the status, biology, and habitat of this coho salmon ESU, see ''Endangered and Threatened Species: Final Listing Determinations for 16 ESUs of West Coast Salmonids and Final 4(d) Protective Regulations for Threatened Salmonid ESUs; Final Rule'' (70 FR 37160; June 28, 2005) and ''Final Rule Endangered and Threatened Species; Threatened Status for Central California Coast Coho Salmon Evolutionarily Significant Unit (ESU)'' (61 FR 56138; October 31, 1996).

The geographic boundaries of west coast coho salmon ESUs ranging from British Columbia to central California were originally delineated as part of a west coast status review for the species (Weitkamp *et al.,* 1995). In defining ESU boundaries for west coast coho salmon, NMFS considered a wide range of information including genetic and life history information for natural and hatchery populations, and environmental and habitat information for those watersheds that supported coho salmon either historically or at the time of the review. Based on a consideration of the best available information at that time, Weitkamp *et al.* (1995) concluded that the southern boundary of the CCC coho salmon ESU was the San Lorenzo River in Santa Cruz County, California. Weitkamp *et al.* (1995) also recognized that coho salmon could also occur in watersheds south of the San Lorenzo River and, therefore, concluded that any fish found spawning south of the San Lorenzo River that were not the result of non-native stock transfers from outside the ESU should be considered part of the ESU.

In 2003, NMFS received a petition to delist those populations of the CCC coho salmon ESU that spawn in coastal streams south of the entrance to San Francisco Bay. The petition was eventually accepted by NMFS (75 FR 16745; April 2, 2010), which triggered a formal status review focused on determining whether the populations south of the entrance to San Francisco Bay were part of the ESU, what the appropriate southern boundary of the ESU should be, and the biological status of any revised ESU. In conducting this status review, new information became available indicating that the range of the ESU should be extended southward (Spence *et al.,* 2011). This information included observations of coho salmon in Soquel Creek in 2008, genetic analysis of tissue samples indicating that the fish from Soquel Creek were closely related to nearby coho salmon populations in the ESU, and the ecological similarity of Soquel and Aptos creeks with other nearby creeks that support coho salmon. Based on this information, a review of the biological status of coho salmon populations within this ESU (Spence and Williams, 2011), and a consideration of the five factors listed under Section 4(a)(1) of the ESA, we proposed moving the southern boundary of the ESU south from the San Lorenzo River to include any coho salmon found in Soquel and Aptos creeks (76 FR 6383; February 4, 2011).

Summary of Peer Review and Public Comments on Proposed CCC Coho Salmon ESU Range Extension

Peer Review Comments

In December 2004, the Office of Management (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum standards for peer review. Similarly, a joint NMFS/U.S. Fish and Wildlife Service (FWS) Policy for Peer Review in Endangered Species Act Activities (59 FR 34270; July 1, 1994) requires us to solicit independent expert review from at least three qualified specialists on proposed listing determinations. Accordingly, we solicited reviews from three scientific peer reviewers having expertise with coho salmon in California and received comments from all three reviewers. We carefully reviewed the peer review comments and have addressed them as appropriate in this final rule. A summary of the peer review comments and our responses follow below.

Issue: Proposed ESU Range Extension

Comment 1: Two of the peer reviewers fully supported our proposal to extend the southern boundary of the CCC coho salmon ESU to include coho salmon populations in Soquel and Aptos creeks. The reviewers cited information referenced in the proposed

rule and its supporting reports (Spence *et al.,* 2011; Spence and Williams, 2011) as supporting the range extension, including: (1) The historic and recent occurrence of coho salmon in Soquel Creek, (2) the likely presence of coho salmon in Aptos Creek historically, (3) the similarity of freshwater habitat in Soquel and Aptos creeks to that found in the San Lorenzo River and other nearby streams that also support coho salmon or did in the past, and (4) the proximity of Soquel and Aptos creeks to nearby streams that support coho salmon.

Response: We agree with the reviewers that the available evidence presented in the proposed rule and the supporting technical reports support our proposal to extend the ESU's range to include coho salmon populations in Soquel and Aptos creeks.

Comment 2: One peer reviewer indicated that the streams immediately south of Aptos Creek, including the Pajaro, Salinas and Carmel rivers, are not likely to have historically supported sustainable coho salmon populations because: (1) Their spawning and rearing habitat is located much farther inland compared with Aptos and Soquel creeks (and other streams farther northward) making adult and juvenile migration difficult, (2) these habitats are likely to lose their connectivity to the ocean during periods of prolonged drought, and (3) coho salmon would therefore be unlikely to persist given their rigid 3-year life cycle.

Response: We agree with the reviewer's comments and believe they support our decision not to include the Pajaro River in the proposed range extension. The reviewer's comments are also consistent with the rationale that led Spence *et al.* (2011) to conclude that the Pajaro River should not be included in any proposed range extension.

Comment 3: One reviewer agreed that the available evidence supports extending the range of the ESU southward to include Soquel Creek, but contended that Aptos Creek should not be included in the proposed range extension because there is no evidence of recent or historic presence of coho salmon spawning in that watershed.

Response: We disagree with the peer reviewer on this issue. Spence *et al.* (2011) explained at length why they concluded that both Soquel and Aptos creeks should be included in any range extension for this ESU, and their rationale was the basis for our proposal. First, they found there was no strong ecological reason that the distribution of coho salmon would have historically stopped at the San Lorenzo River (the current southern boundary of the ESU) because there is no significant ecological break along the coast before the southern edge of the Santa Cruz Mountains which marks the southern boundary of the Coast Range Ecoregion. Second, they indicated that Soquel and Aptos creeks are in the Coast Range Ecoregion, both are in very close proximity to the San Lorenzo River (approximately 7 and 10 km south, respectively), and both historically shared many habitat characteristics with the San Lorenzo and other similar sized coho salmon bearing streams to the north. Third, they indicated that the recent documentation of coho spawning in Soquel Creek suggests it is possible that coho salmon may also stray into Aptos Creek (as well as Soquel Creek) from populations in nearby watersheds to the north because of their close proximity.

Based on the arguments presented in Spence *et al.* (2011), our proposal to extend the southern boundary of this ESU to include both Soquel and Aptos creeks was intended to ensure that any coho salmon found in either watershed in the future would be considered part of this ESU, and therefore, subject to protection under the ESA. Absent a formal range extension that includes Aptos Creek, we believe it would be difficult to ensure that any coho salmon found in that watershed would be protected under the ESA in the future. By formally including Aptos Creek in the range extension, we have provided the public and other entities with notice (and comment opportunity) that any coho salmon found there in the future will be considered part of the ESU and subject to protection under the ESA.

Comment 4: The same peer reviewer that disagreed with our proposal to include Aptos Creek in the proposed range extension also questioned why Spence *et al.* (2011) did not recommend including the Pajaro River in the range extension since it may have also historically supported coho salmon just as was the case for Aptos Creek.

Response: In evaluating the various alternative southern watershed boundaries for this ESU (e.g., San Lorenzo River, Soquel Creek, Aptos Creek, and the Pajaro River), Spence *et al.* (2011) considered three primary factors: (1) Evidence of historical and recent occurrence of coho in each watershed, (2) the historical suitability of freshwater habitats for coho salmon in each watershed, and (3) the geographic proximity of each watershed to other known populations of coho salmon. In making their recommendation for a southern boundary extension, Spence *et al.* (2011) weighed all of the available information related to these factors and concluded that the available evidence did not support including the Pajaro River in any range extension.

Their reasons for not recommending inclusion of the Pajaro River in the range extension were: (1) The lack of recent or historical first hand accounts of coho salmon in the watershed, (2) the likelihood that environmental conditions were not favorable for coho salmon in the southern and eastern portions of the watershed because of habitat and environmental changes that occur in watersheds south of the Santa Cruz Mountains, (3) the high likelihood that any suitable habitat for coho salmon in the watershed (most likely in areas draining the Santa Cruz Mountains) would lose its connectivity to the ocean, unlike Soquel and Aptos creeks, during periods of drought, thereby precluding successful adult and juvenile migration to and from the ocean, and (4) the relatively low likelihood that coho salmon from streams to the north would stray into the watershed given its relative large distance from Aptos Creek and the San Lorenzo River (16 and 26 kilometers, respectively).

Issue: ESU Status and Characterization

Comment 5: One peer reviewer commented that the long-term trend analysis presented by Spence and Williams (2011) for the abundance of several coho salmon populations in this ESU failed to emphasize the major decline in abundance that began for most of the populations starting in 2006. The peer reviewer contended that the main factor responsible for the population declines that began in 2006 was a significant reduction in ocean productivity that began in 2005 and adversely impacted the ocean survival of coho salmon.

Response: We agree with the peer reviewer that the trend analysis presented in Spence and Williams (2011) does not reflect the significant population declines that were observed starting in 2006. Spence and Williams (2011) did note that the poor returns began in 2006, but did not attribute the declines to any particular cause. We agree with the peer reviewer that these abrupt population declines beginning in 2006 were most likely caused by poor ocean conditions that started in 2005. Other salmon and steelhead populations in California also exhibited major declines in abundance during this period that were attributed to poor ocean productivity (Lindley *et al.,* 2009), and therefore, it is reasonable to conclude that reductions in ocean productivity were the primary cause of

these coho salmon population declines as well.

Comment 6: Each of the peer reviewers agreed with Spence and Williams (2011) that the extinction risk of this ESU has increased since it was last reviewed in 2005 and that our proposal to list the ESU as endangered was warranted.

Response: We agree with the peer reviewers that extinction risk for this ESU has increased substantially since it was last reviewed in 2005 and that the ESU therefore continues to warrant listing as an endangered species under the ESA.

Comment 7: One peer reviewer felt it was inappropriate for the proposed rule to characterize the 2008 discovery of juvenile coho salmon in Soquel Creek (and the associated spawning that produced the juveniles) as a ''population'' of coho salmon because we do not know if those juveniles will produce returning adults that will successfully spawn in the future leading to a persistent population.

Response: We agree with the peer reviewer that the proposed rule should not have characterized the observation of juvenile coho salmon in 2008 as a ''coho salmon population'' since this presumes that a persistent population of coho salmon has been established. Accordingly, we have revised the final rule where appropriate to indicate there is documented evidence of coho salmon spawning and rearing in Soquel Creek rather than evidence of a newly established coho salmon ''population.''

Comment 8: One peer reviewer indicated that the technical reports supporting the proposed range extension (Spence *et al.,* 2011; Spence and Williams, 2011) were inconsistent in how they described the number of spawning events that may have occurred in Soquel Creek in 2008.

Response: The peer reviewer misinterpreted the description of how many spawning events occurred in Soquel Creek, and therefore, the reports are not inconsistent. In Spence and Williams (2011), the authors were referring to genetic analysis of fish collected in three watersheds, only one of which was Soquel Creek. The method of analysis used by the researchers referenced in the report can only provide a minimum number of spawners and for two of the streams (San Vincente and Alpine) the methodology indicated there had been a minimum of a single spawning pair. In Soquel Creek, however, the analysis indicated that there had been at least three individuals involved in spawning, which indicated that there were a minimum of two spawning events. Spence *et al.* (2011) indicate that the juveniles found in Soquel Creek were the product of at least two reproductive events, and therefore, the two reports are consistent.

Public Comments

The proposed range extension for the CCC coho salmon ESU was published on February 4, 2011 (76 FR 6383) with a 60-day public comment period. Based on a request from one individual, we extended the public comment period for an additional 60 days, so the public comment period finally closed on June 6, 2011. Two written comment submittals were received on the proposed action. One set of comments was provided by the petitioner and largely focused on the scientific issues addressed in our 12-month finding on that petition as well as our scientific evaluation of the petition (Spence *et al.,* 2011). The other commenter provided comments regarding the potential economic consequences of the proposed range extension. We carefully reviewed the comments to identify those issues that were within the scope of the rulemaking and have addressed those herein. A summary of those comments and NMFS' responses are presented below by specific issue.

Issue: Scientific Information Used To Support NMFS' 12-Month Finding That Coho Salmon Populations South of San Francisco Bay Are Part of the CCC Coho Salmon ESU and the Proposed Range Extension

Comment 9: One commenter asserted that the available scientific information does not support NMFS' 12-month finding that coho salmon populations south of the entrance to San Francisco Bay are part of the CCC coho salmon ESU or our proposal to extend the geographic range of this ESU south to include coho salmon populations in Aptos and Soquel creeks. In making this assertion, the commenter argued there were gaps or other problems with the scientific information used by NMFS in making these determinations or that we somehow misinterpreted the available information. The scientific issues raised by the commenter in support of this assertion were: (1) NMFS' use of intrinsic potential modeling to evaluate historical habitat potential in watersheds south of the entrance to San Francisco Bay; (2) questions about recent fish surveys conducted by the Southwest Fisheries Science Center (SWFSC) in watersheds south of San Francisco; (3) the absence of genetic data for coho salmon from the San Lorenzo River; (4) inaccuracies in the historical hatchery stocking information for coho salmon considered by NMFS; (5) NMFS' interpretation of archeological data for coho salmon; and (6) NMFS's evaluation of coho salmon habitat suitability in areas south and immediately north of the entrance to San Francisco Bay. A general response to the commenter is provided here and each of the points identified in this comment to support the commenter's assertion are addressed in greater detail in comments 10 through 15.

Response: We convened a biological review team (BRT) to thoroughly evaluate all of the information in the petition to delist coho salmon populations south of the entrance to San Francisco Bay, as well as all other relevant scientific data and information concerning the issues raised in the petition. Based on its review and analysis, the BRT concluded that: (1) Coho salmon populations south of the entrance to San Francisco Bay were native to the area and extant populations are part of the CCC coho salmon ESU; and (2) the southern boundary of the ESU should be moved farther south to include coho salmon populations occurring in Soquel and Aptos creeks (Spence *et al.,* 2011). The BRT's review included an exhaustive assessment of information in the petition and other relevant information including: Evidence about coho salmon distribution in the historical literature; archeological data for coho salmon from native American Indian middens; the suitability of freshwater habitat conditions for coho salmon in coastal watersheds immediately north and south of San Francisco Bay; historical hatchery stocking information for coho salmon in watersheds south of San Francisco Bay; comprehensive genetic data collected for extant coho salmon populations throughout the range of the ESU including those south of San Francisco Bay; and recent information on the presence of coho salmon in watersheds south of San Francisco Bay including Soquel Creek. We believe that the BRT used the best available scientific information and that its conclusions regarding coho salmon populations south of the entrance to San Francisco Bay represent the most scientifically defensible interpretation of the available data. Our 12-month finding and proposed range extension were based upon the scientific information and conclusions reached by the BRT, and therefore, we believe these decisions are scientifically defensible and consistent with the best available information. Responses to the issues upon which the commenter based his

assertion are provided in comments 10 through 15.

Comment 10: The commenter criticized NMFS' use of an intrinsic habitat model to estimate potential coho salmon habitat capacity in streams south of the entrance to San Francisco Bay. The commenter argued that the model assumptions were unrealistic and that the model was not properly calibrated for stream habitat and coho salmon populations south of San Francisco Bay. For these reasons, the commenter asserted that use of this modeling resulted in an inaccurate characterization of coho salmon population structure south of San Francisco Bay, an overestimation of the historical habitat and abundance of coho salmon populations in streams south of San Francisco Bay, and an underestimate of the extinction risk of the populations south of San Francisco Bay.

Response: In developing the draft recovery plan for the CCC coho salmon ESU, NMFS established a technical recovery team (TRT) to develop a scientific foundation for the recovery planning analysis. As part of its work, the TRT used an intrinsic potential habitat model to estimate habitat that would potentially be available to support individual coho salmon populations that are part of this ESU if the habitat was properly functioning (Agrawal *et al.,* 2005; Bjorkstedt *et al.,* 2005). The results of this analysis were then used in the historical population structure analysis and in estimating adult spawner abundance levels that could have been supported by the habitat. This information was used to develop viability criteria or recovery targets for the ESU as a whole. The TRT stated its working assumptions in using this model and evaluated those assumptions and the overall modeling approach by comparing available historical adult spawner estimates with adult abundance estimates that were derived from the intrinsic potential habitat modeling (Spence *et al.,* 2008). The TRT noted that there was a high degree of uncertainty regarding available historical estimates of adult abundance, but they noted these estimates provided the only basis for assessing whether the estimates derived from the modeling were within a plausible range for this and other ESUs that were similarly evaluated (Bjorkstedt *et al.,* 2005). A comparison of projected adult abundance levels derived from the modeling with adult abundance levels estimated in a 1965 statewide coho salmon abundance assessment (California Department of Fish and Game (CDFG), 1965) led the TRT to conclude that the habitat model predicted abundance levels that were plausible (Spence *et al.,* 2008).

For the area south of the entrance to San Francisco Bay, the TRT compared intrinsic habitat modeling population estimates with coho salmon abundance data collected by Shapovalov and Taft (1954) in Waddell Creek. Shapovalov and Taft (1954) estimated adult abundance of coho salmon in Waddell Creek over a nine year period covering the spawning seasons from 1933–1942. The average annual adult run size for coho salmon during that period was estimated to be 313 fish (range 111–748). In comparison, the intrinsic habitat modeling for the smallest independent population in the area south of San Francisco Bay yielded an estimate of 365 potential adult spawners. Because the habitat conditions in Waddell Creek at the time of the study were less than pristine due to heavy timber harvest in the past, the TRT concluded the modeled adult abundance projection was realistic and not an overestimate. Based on these and other results presented by the TRT (Agrawal *et al.,* 2005; Bjorkstedt *et al.,* 2005), we believe the use of intrinsic habitat modeling for streams south of the entrance to San Francisco Bay is a valid tool for assessing population structure and developing population viability criteria for coho salmon. For these reasons we disagree with the commenter that the intrinsic potential habitat modeling overestimated historic abundance levels and underestimated extinction risk for watersheds south of San Francisco Bay.

Comment 11: The commenter indicated that coho salmon survey information collected by the SWFSC in streams south of San Francisco Bay from 2006–2008 and discussed in the BRT's report on the coho salmon delisting petition (Spence *et al.,* 2011) was incomplete and difficult to interpret because the survey objectives, methods and detailed results were not presented. The commenter argued this information was relevant for evaluating the status of coho populations south of the entrance to San Francisco Bay and determining whether they were part of the CCC coho salmon ESU.

Response: The objectives of the SWFSC 's surveys from 2006–2008 were three-fold: (1) To evaluate methods for defining an appropriate sampling protocol for species' presence in areas where it is known to be in low abundance or patchily distributed; (2) to develop statistical methods for estimating occupancy rates of species under such circumstances; and (3) to develop a short time series on the status of coho salmon in the area south of San Francisco between San Gregorio and Aptos creeks, a range which spanned three brood cycles. The genetic analysis and the surveys completed in connection with this study are final and documented with detailed results; the surveys and genetic analysis were completed using standard NMFS methodology but have not yet been published (SWFSC, unpublished). As such, we do not believe that the information relied upon was incomplete or difficult to interpret. Furthermore, the information derived from these completed aspects of the study is scientifically credible and represents the best available information on the status and geographic range of coho salmon south of San Francisco Bay. This final, scientifically credible information documents the presence of coho salmon in Soquel Creek and the analysis of genetic data from these fish. This information was considered by the BRT and was an important factor in their recommendation to extend the southern boundary of the CCC coho salmon ESU to include Soquel and Aptos creeks (Spence *et al.,* 2011). This information was also considered by Spence and Williams (2011) in their updated assessment of the status of this ESU. Information collected on the status of coho salmon in these streams was considered by the BRT and did provide important information regarding the southern boundary of the CCC coho salmon ESU, as well as the current status of coho salmon in the streams south of San Francisco Bay (Spence and Williams, 2011). As such, we believe that our determination to extend the geographic boundary of the ESU southward to include Soquel and Aptos creeks was founded on the best scientific information available.

Comment 12: The commenter asserted the BRT (Spence *et al.,* 2011) failed to report microsatellite DNA results for coho salmon from the San Lorenzo River and that the genetic database for the CCC coho salmon ESU was therefore incomplete. The commenter further argued that NMFS' conclusions regarding the origin and ancestry of coho salmon south of the entrance to San Francisco Bay could be in error because the genetic database did not include data for fish from the San Lorenzo River.

Response: We do not have any genetic data for coho salmon from the San Lorenzo River, and therefore, it could not be included in the genetic data sets analyzed by the BRT (Spence *et al.,* 2011). Coho salmon are rarely observed in the San Lorenzo River, which has contributed to the lack of genetic

information for that watershed. The SWFSC does have a limited number of coho salmon tissue samples taken from the San Lorenzo River, but they have not been analyzed largely because of uncertainties about their origin.

Although we do not have genetic data for coho salmon from the San Lorenzo River, there are comprehensive genetic data from coho salmon populations in other watersheds south of San Francisco Bay, as well as watersheds north of San Francisco Bay, and that information was carefully analyzed by the BRT (Spence *et al.,* 2011). Based on the analysis of all the available genetic data for coho salmon in this ESU, the BRT concluded that extant populations of coho salmon south of San Francisco Bay are part of the ESU and not the result of stock transfers from populations outside the ESU (Spence *et al.,* 2011). We believe the genetic data that the BRT analyzed in its review of the southern boundary of this ESU are scientifically credible, that they represent the best available information for coho salmon populations throughout the geographic range of this ESU including those populations south of San Francisco Bay, and that they support our determination to extend the geographic boundary of the ESU southward to include Soquel and Aptos creeks.

Comment 13: The commenter asserted that, in its review of the coho delisting petition, the BRT did not use all available historical records regarding the artificial propagation and out-planting of coho salmon in streams south of the entrance to San Francisco Bay. The commenter provided information regarding the history of coho salmon out-planting in Waddell and Scott creeks that he asserted were in conflict with that reviewed by the BRT. Waddell Creek is an important watershed south of the entrance to San Francisco Bay in part because a major study on the life history of coho salmon and steelhead was initiated there by Shapovalov and Taft (1954) around the same time coho salmon were out-planted into the watershed. The commenter suggested coho salmon were planted in Waddell Creek in large numbers between the early 1920s and 1933 (citing Streig (1991) and Bryant (1994)) and by inference, implied that planted fish contributed to the number of adults observed in the Shapovalov and Taft (1954) life history study.

Response: We reviewed the source data cited by Streig (1991) and Bryant (1994) as well as other sources of data, and found no evidence of coho salmon being out-planted into Waddell Creek during the period from 1911 to 1941, other than 15,000 fish that were released in 1933 and an undetermined number that were released for an age validation study in 1929. Both of these plantings were considered by the BRT and discussed in their report (Spence *et al.,* 2011). In evaluating the Streig (1991) report, which was the basis for the numbers presented in Bryant (1994), we found discrepancies between reported numbers and the original sources that were cited. If other stocking information was used in compiling the Streig (1991) and Bryant (1994) reports, we have not found that information, and therefore, believe the data and analysis by the BRT (Spence *et al.,* 2011) are the most scientifically defensible data available for assessing the artificial propagation and out-planting of coho salmon in streams south of San Francisco Bay.

Moreover, regardless of the number of fish out-planted into Waddell Creek or any other watershed south of San Francisco Bay, the BRT (Spence *et al.,* 2011) emphasized that the out-planted coho salmon likely experienced very low survival rates due to the common practice at the time of releasing fish as fry. Because of these low survival rates, we believe the out-planting of artificially propagated coho salmon into Waddell Creek is unlikely to have contributed substantially to the adult coho salmon numbers reported by Shapovalov and Taft (1954).

Comment 14: The commenter disagreed with the BRT's interpretation of archeological data from a site at Año Nuevo State Reserve that was used to support the determination that coho salmon populations were native to watersheds south of San Francisco Bay. The commenter asserted that the coho bones found there were from fish that were of marine origin, rather than from a stream at that site, and therefore, argued that these data are inconclusive and do not support the BRT's statement that coho salmon occurred as far south as Santa Cruz county.

Response: The BRT reviewed the most recent available archeological information relevant to the southern extent of the range of coho salmon (Gobalet, in press), as well as earlier literature by Gobalet (Gobalet, 1990; Gobalet and Jones, 1995; and Gobalet *et al.,* 2004) that provide additional information regarding the archeological record for coho salmon in California. The BRT acknowledged that evidence in the archeological record for coho salmon in California, particularly in coastal areas, is sparse (Spence *et al.* 2011). However, the BRT considered the information, analysis and conclusions presented in Gobalet (in press) to be the best available archeological information relevant to determining the historical presence of coho salmon south of San Francisco Bay, and their conclusion that coho salmon occurred as far south as Santa Cruz county is based on that information. The commenter did not provide any new information to support his assertion that the coho salmon bones found at the Año Neuvo site were of marine origin or that would alter our view that these bones are from coho salmon and constitute significant data documenting the presence of coho salmon in Santa Cruz County. We believe the data presented in Gobalet (in press) represents the best available archeological information relevant to determining the historical distribution of coho salmon south of San Francisco Bay. In summary, we believe the available archeological information reviewed by the BRT is scientifically credible, that it represents the best available information regarding the historical distribution of coho salmon south of San Francisco Bay, and that it supports our 12-month finding that coho salmon south of San Francisco are part of the CCC coho salmon ESU.

Comment 15: The commenter asserted that the BRT's conclusion that freshwater habitat conditions are suitable for coho salmon in watersheds both south and north of the entrance to San Francisco Bay was incorrect and that there are significant habitat differences between the two areas that preclude the persistence of coho salmon in streams south of San Francisco. The commenter provided information for survival rates in streams in Oregon and Washington that were published in 1982 and compared those data to survival rates estimated by Shapovalov and Taft (1954). The commenter also provided information on flood flows recorded during the Shapovalov and Taft (1954) study.

Response: The BRT carefully reviewed contemporary freshwater habitat data for streams north and south of San Francisco Bay in its review of the petition to delist coho salmon south of San Francisco Bay (Spence *et al.,* 2011). Their review included substantial information submitted by the petitioner as a supplement to the original petition. Following its review, the BRT concluded that historical habitat conditions in watersheds south of San Francisco Bay were conducive to the presence of persistent coho salmon populations since the freshwater habitat conditions south of San Francisco Bay are not appreciably different from those in watersheds immediately north of San Francisco Bay, as described in their report. The BRT also concluded that current habitat conditions south of San Francisco (as well as elsewhere in the

range of the CCC coho salmon ESU) are a challenge to coho salmon populations, but that currently degraded habitat conditions are mainly due to anthropogenic effects, rather than any inherent characteristics of the watersheds themselves. We believe that the freshwater habitat information considered by the BRT represents the best available information regarding the suitability of habitat for coho salmon south of San Francisco Bay. The survival rate information provided by the commenter concerned coho salmon from a different eco-region under different environmental conditions; furthermore, the data cited by the commenter were gathered in a time period different from the one considered in Shapalov and Taft. The data provided by the commenter do not represent a valid comparison of habitat conditions from areas north and south of San Francisco, and therefore, do not refute the scientifically-credible conclusions of the BRT. After considering the information provided by the commenter and its relevance, in addition to the information and analysis found in Spence *et al.,* (2011), we believe that the BRT's conclusions concerning freshwater habitat suitability for coho salmon in watersheds both south and north of the entrance to San Francisco Bay were correct. The BRT's conclusions support both our finding that coho salmon south of San Francisco are part of the CCC coho salmon ESU and our proposal to move the southern boundary of the ESU south to include Soquel and Aptos creeks.

Issue: Viability of Coho Populations South of San Francisco Bay and Their Contribution to the Evolutionary Legacy of the CCC Coho Salmon ESU

Comment 16: One commenter provided an analysis of data collected by Shapovalov and Taft (1954) and argued the results indicated coho salmon populations south of San Francisco were likely to go extinct and that these and other populations south of San Francisco are ''sink'' populations that are ephemeral and do not contribute to the evolutionary legacy of the CCC coho salmon ESU. Based on these reasons and the commenter's interpretation of NMFS' ESU policy, the commenter argues that coho salmon populations south of San Francisco Bay should not be part of the CCC coho salmon ESU. A similar argument was made in the petition to delist coho salmon populations south of San Francisco Bay.

Response: The BRT that evaluated the petition to delist coho salmon populations south of San Francisco Bay addressed the viability of coho salmon populations south of San Francisco Bay and their contribution to the evolutionary legacy of the species (Spence *et al.,* 2011). Based on the BRT's review of the best available information (especially Bjorkstedt *et al.,* 2005), they concluded that populations south of San Francisco Bay were most likely a combination of independent and dependent populations that contributed to the overall functioning of the CCC coho salmon ESU rather than serving as''sink'' or ephemeral populations. The BRT also noted that even if the populations south of San Francisco were ''sink'' populations they could still contribute to the persistence of the ESU as a whole based on the current understanding of meta-population function. For the reasons stated in Spence *et al.* (2011), we reach the same conclusions arrived at by the BRT with regard to the populations south of San Francisco Bay. Lastly, the commenter's argument that populations south of San Francisco Bay do not contribute to the evolutionary legacy of the ESU, and therefore, should not be included in the ESU, demonstrates a lack of understanding of the evolutionary legacy criterion in NMFS' ESU policy for Pacific Salmon (56 FR 58612; November 20, 1991). The commenter is attempting to apply the evolutionary legacy criterion to individual populations, which is inappropriate. Under NMFS' ESU policy, the evolutionary legacy criterion is applied to the group of populations being considered as an ESU, rather to individual populations. Accordingly, we believe that our proposed redefinition of the CCC coho salmon ESU boundaries is based on the best available information and the proper interpretation and application of NMFS' ESU policy for Pacific Salmon.

Issue: Climate Change and Long-Term Sustainability of Coho Salmon Populations South of San Francisco Bay

Comment 17: One commenter questioned the long-term sustainability or viability of the coho salmon populations in coastal streams south of the entrance to San Francisco Bay in light of potential future impacts to the species and its habitat from climate change, changes in sea level, changes in the California Current and its productivity, and other factors. Given these factors, the commenter expressed concern about the economic cost of maintaining suitable habitat for coho salmon populations in watersheds south of San Francisco Bay and questioned the need to include these populations in the CCC coho salmon ESU and provide them with protection under the ESA.

Response: Although we recognize that ensuring the long-term persistence of coho salmon in streams south of San Francisco presents many difficulties and uncertainties due to the current extremely low population sizes, the poor condition of the habitat in many watersheds, changes in the productivity of the California Current, and the possible effects of climate change, coho salmon populations south of San Francisco Bay are critical to the long-term viability and recovery of the CCC coho salmon ESU as a whole, and it is both necessary and possible to restore these populations (NMFS, 2010). Moreover, once we identify an ESU that meets the criteria of our ESU policy for Pacific Salmon, and determine that that ESU is threatened or endangered under the ESA, we must list that ESU.

Issue: Economic Impacts of Proposed CCC Coho Salmon ESU Range Extension

Comment 18: One commenter asserted the proposed range extension of the CCC coho salmon ESU failed to consider the potential financial impacts to landowners and other entities in Soquel and Aptos creeks.

Response: Our proposal was to revise the CCC Coho ESU boundaries in order to formally recognize that the freshwater range of coho salmon in this ESU actually extends further south than was previously thought. Unlike critical habitat designations, section 4(b)(1)(A) of the ESA explicitly prohibits us from considering non-scientific information (including potential economic impacts) when making listing determinations. If we determine that the existing critical habitat designation for this ESU should be revised in the future to include freshwater habitat in Soquel and Aptos creeks, then an economic analysis appropriate to critical habitat designations, as stated in the applicable statutes, implementing regulations, and executive orders, will be conducted.

Revised Geographic Range of CCC Coho Salmon ESU

The ESU boundaries for west coast coho salmon, ranging from southern British Columbia to Central California, were first delineated in a 1994 status review (Weitkamp *et al.,* 1995). In delineating these ESU boundaries, a wide range of information pertaining to West Coast coho salmon throughout its range was considered, including geographic variables, ecological and habitat variables, genetic variation among populations, and variation in life history traits among populations. In the 1995 proposal to list the CCC coho

salmon ESU (60 FR 38011), NMFS indicated that the southern boundary of the ESU was the San Lorenzo River in Santa Cruz County based on the best available information at that time.

The 1994 status review (Weitkamp *et al.,* 1995) recognized that the rivers draining the Santa Cruz Mountains south of San Francisco Bay formed a cohesive group with respect to environmental conditions, and therefore, concluded that the Pajaro River was likely the historical southern limit of coho salmon in the area. In determining where the southern boundary of the CCC coho salmon ESU should be placed, the status review analysis relied heavily on information provided in a 1993 status review of coho salmon in Scott and Waddell creeks (Bryant, 1994), which indicated there were no recent reports of coho salmon in rivers south of the San Lorenzo River. Faced with uncertainty about whether any coho salmon populations were present south of the San Lorenzo River and the uncertain origin of coho salmon in the San Lorenzo River, Weitkamp *et al.* (1995) concluded that the San Lorenzo River should be the southern-most basin in the ESU and that any coho salmon found spawning south of the San Lorenzo River that were not the result of non-ESU origin stock transfers should be considered part of the ESU.

In reviewing the petition to delist coho salmon populations south of San Francisco Bay, the BRT reviewed recently collected information on the distribution of coho salmon in this area (Spence *et al.,* 2011). Based on this new information and other information indicating that freshwater habitat conditions and watershed processes in Soquel and Aptos creeks were similar to those found in nearby watersheds within the ESU, the BRT recommended that the southern boundary of the CCC coho salmon ESU be moved southward from the San Lorenzo River to include coho salmon occurring in Soquel and Aptos creeks. The new information supporting this recommendation included: (1) Observations of juvenile coho salmon in Soquel Creek in 2008 and (2) genetic information obtained from the juvenile coho salmon observed in Soquel Creek indicating the fish were closely related to populations in nearby watersheds.

During the summer of 2008, juvenile coho salmon were observed in Soquel Creek by NMFS scientists for the first time in many years. Soquel Creek enters the Pacific Ocean about 6.5 km south of the San Lorenzo River. A total of approximately 170 juvenile fish were observed in the East Branch of Soquel Creek and some were photographed. These observations demonstrated that suitable spawning and rearing habitat for coho salmon occurs in Soquel Creek. A total of 28 of these fish were captured for tissue sampling and subsequent genetic analysis. Genetic analyses of these samples used 18 microsatellite loci to genotype the fish, investigate the origins of their parents, and to estimate the minimum number of reproductive events that contributed to the observed juveniles. Standard genetic stock identification techniques were used with a baseline reference database that included representative stocks from all regional California groups of coho salmon. The Soquel Creek fish were compared to coho salmon from a south of San Francisco Bay reference population (Scott Creek in Santa Cruz County, California) and it was determined, with very high confidence, that they were closely related. This analysis demonstrated that the juvenile fish observed in Soquel Creek were the progeny of locally produced adults returning to reproduce in nearby streams, and that they were native to streams draining the Santa Cruz Mountains south of San Francisco Bay.

Genetic analysis of tissue samples from these juveniles (Garza *et al.,* unpublished as cited in Spence *et al.,* 2011) also revealed that they were produced by a minimum of two reproductive events in Soquel Creek, rather than by a single pair of fish randomly straying into the watershed. The analysis only determined the minimum number of spawning parents, so it is possible that additional reproductive events occurred in Soquel Creek in 2008. This information strongly supports our conclusion that the fish in Soquel Creek are part of the CCC coho salmon ESU.

In reviewing the ecological conditions of streams south of San Francisco Bay that originate from the Santa Cruz Mountains, Spence *et al.* (2011) noted that a significant ecological transition occurs immediately south of the Santa Cruz Mountains, with the northern edge of the Salinas Valley marking the boundary between an area with cool, wet redwood forests to the north and an area with warm, drier chaparral landscapes to the south where small relic redwood forests are primarily confined to riparian areas near the coast. The Soquel and Aptos watersheds occur within the Coast Range Ecoregion, which runs almost continuously from the Oregon border to the southern boundary of the Santa Cruz Mountains (the northern edge of the Pajaro River basin) and includes all the streams originating from the Santa Cruz Mountains south of San Francisco. Soquel and Aptos creeks exhibit ecological, climatic, and habitat attributes similar to streams historically and/or presently occupied by coho salmon elsewhere in this Ecoregion, indicating they provide habitat that is suitable for coho salmon.

Status of the CCC Coho Salmon ESU

Status reviews by Weitkamp *et al.* (1995), Good *et al.* (2005), and Spence and Williams (2011) have all concluded that the CCC coho salmon ESU is in danger of extinction. NMFS listed this ESU as threatened in 1996 (61 FR 56138) and reclassified its status as endangered in 2005 (71 FR 834). The status reviews by Weitkamp *et al.* (1995) and Good *et al.* (2005) cited concerns over low abundance and long-term downward trends in abundance throughout the ESU, as well as the extirpation or near extirpation of populations across most of the southern two-thirds of the ESU's historical range, including several major river basins. They further cited as risk factors the potential loss of genetic diversity associated with the reduction in range and the loss of one or more brood lineages in some populations coupled with the historical influence of hatchery fish (Good *et al.,* 2005).

As part of a recent 5-year status review update for listed salmon and steelhead in California, Spence and Williams (2011) updated the biological status of the CCC coho salmon ESU, taking into consideration the recent discovery of coho salmon in Soquel Creek. Their review concluded that despite the lack of long-term data on coho salmon abundance, available information from recent short-term research and monitoring efforts demonstrates that the status of coho populations in this ESU has worsened since it was reviewed in 2005 (Good *et al.,* 2005). For all available time series, recent population trends were downward, in many cases significantly so, with particularly poor adult returns from 2006 to 2010. Based on population viability criteria that were developed to support preparation of the draft recovery plan for this ESU (Bjorkstedt *et al.,* 2005; Spence *et al.,* 2008), all of its independent populations in the ESU are well below low-risk abundance targets (e.g., Ten Mile River, Noyo River, Albion River), and several are, if not extirpated, below high-risk depensation thresholds (e.g., San Lorenzo River, Pescadero Creek, Gualala River). Though population-level estimates of abundance for most independent populations are lacking, it does not appear that any of the five diversity strata identified by Bjorkstedt *et al.*

(2005) for this ESU currently support a single viable population based on the viability criteria developed by Spence *et al.* (2008). Based on a consideration of all new substantive information regarding the biological status of this ESU, including the recent discovery of juvenile coho salmon in Soquel Creek, Spence and Williams (2011) concluded that the CCC coho salmon ESU continues to be in danger of extinction and that its overall extinction risk has increased since 2005. We concur.

Summary of Factors Affecting the Revised CCC Coho Salmon ESU

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat and Range

Our review of factors affecting the CCC coho salmon ESU concluded that logging, agriculture, mining activities, urbanization, stream channelization, dams, wetland loss, water withdrawals, and unscreened diversions have contributed to its decline. Land-use activities associated with logging, road construction, urban development, mining, agriculture, and recreation have significantly altered coho salmon habitat quantity and quality (61 FR 56138, October 31, 1996; 70 FR 37150, June 28, 2005). Impacts of these activities include alteration of streambank and channel morphology, alteration of ambient stream water temperatures, elimination of spawning and rearing habitat, fragmentation of available habitats, elimination of downstream recruitment of spawning gravels and large woody debris, removal of riparian vegetation resulting in increased stream bank erosion, and degradation of water quality (61 FR 56138, October 31, 1966; 70 FR 37150, June 28, 2005).

Land-use and extraction activities leading to habitat modification can have significant direct and indirect impacts to coho salmon populations. Land-use activities associated with residential and commercial development, road construction, use and maintenance, recreation, and past logging practices have significantly altered coho salmon freshwater habitat quantity and quality throughout this ESU, as well as in the Aptos and Soquel watersheds. Associated impacts of these activities include alteration of streambank and channel morphology, alteration of ambient stream water temperatures, degradation of water quality, elimination of spawning and rearing habitats, removal of instream large woody debris that forms pool habitats and overwintering refugia, removal of riparian vegetation resulting in increased bank erosion, loss of floodplain habitats and associated refugia, and increased sedimentation input into spawning and rearing areas resulting in the loss of channel complexity, pool habitat, and suitable gravel substrate.

The loss and degradation of habitats and instream flow conditions were identified as threats to coho salmon in Soquel and Aptos creeks in the draft recovery plan for this ESU (NMFS, 2010). Although many historically harmful practices have been halted, particularly removal of large woody debris by Santa Cruz County, much of the historical damage to habitats limiting coho salmon in these watersheds remains to be addressed. Habitat restoration activities and threat abatement actions will likely require more focused effort and time to stabilize and improve habitat conditions in order to improve the survival of coho salmon in these watersheds. Additionally, some land-use practices such as water diversions, floodplain development, unauthorized removal of inchannel woody debris, quarrying, and road maintenance practices continue to pose risks to the survival of local coho salmon populations. Insufficient flow during the summer due to authorized and unauthorized water diversions is likely one of the most significant limiting factors to coho salmon, particularly on the lower mainstem of Soquel Creek.

B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Commercial and recreational fisheries are closed for coho salmon in California; however, coho salmon in this ESU can still be incidentally captured in fisheries for other species. The impacts to coho salmon of this type of incidental bycatch are poorly understood, but may be significant in watersheds where population abundance is low. Recreational fishing for steelhead is allowed in Soquel and Aptos creeks, and coho salmon, if present, may unintentionally be caught by anglers targeting steelhead. The risk of unintentional capture is believed to be higher in these watersheds than in many other coastal streams with coho salmon because the current State of California fishing regulations allow catch and release of steelhead based on calendar dates regardless of river flow. Steelhead fishing season opens on December 1, which is a time of year when coho salmon typically begin their upstream migration and is typically one month before the main steelhead migration. Fishing for steelhead during low-flow periods may expose coho salmon adults to increased rates of incidental capture and injury.

At the time the CCC coho salmon ESU was listed in 1996, collection for scientific research and educational programs was believed to have little or no impact on California coho salmon populations. In California, most scientific collection permits are issued by CDFG and NMFS to environmental consultants, Federal resource agencies, and educational institutions. Regulation of take is achieved by conditioning individual research permits (61 FR 56138, October 31, 1996). Given the extremely low population levels throughout this ESU, but especially in watersheds south of San Francisco Bay, any collections could have significant impacts on local populations and need to be carefully controlled and monitored. In Soquel and Aptos creeks, two researchers are currently sampling juvenile salmonid populations using electrofishing as part of their sampling methodology. Only one researcher is authorized to capture coho salmon and the other must stop collections if juvenile coho salmon are detected.

C. Disease or Predation

Relative to the effects of habitat degradation, disease and predation were not believed to be major factors contributing to the decline of West Coast coho salmon populations in general or for this ESU in particular. Nevertheless, disease and predation could have substantial adverse impacts in localized areas. Specific diseases known to be present in the ESU and affect salmonids are discussed in a previous listing determination (69 FR 33102; June 14, 2004). No historical or current information is available to estimate infection levels or mortality rates for coho salmon attributable to these diseases.

Habitat conditions such as low water flows and high water temperatures can exacerbate susceptibility to infectious diseases (69 FR 33102). The large quantity of water diverted from Soquel Creek, which results in decreased summer flows, may increase the susceptibility of rearing coho salmon to disease and predation. Avian predators have been shown to impact some juvenile salmonids in freshwater and near shore environments. In Scott Creek, which is near Soquel and Aptos creeks, NMFS staff (Hayes, personnel communication) have documented substantial predation impacts on out-migrating salmonid smolts, based on the discovery of pit tags in gull nesting areas. Predation may significantly influence salmonid abundance in some

local populations when other prey species are absent and physical conditions lead to the concentration of adults and juveniles (Cooper and Johnson, 1992). Low flow conditions in these watersheds may enhance predation opportunities, particularly in streams where adult coho salmon may congregate at the mouth of streams waiting for high flows for access (CDFG, 1995). These types of conditions could significantly impact coho salmon in Soquel Creek because of the low abundance of fish in that watershed. Marine predation (i.e., seals and sea lions) is a concern in some areas given the dwindling abundance of coho salmon across the range of this ESU; however, such predation is generally considered by most investigators and the BRT to be an insignificant contributor to the population declines that have been observed in Central California.

D. Inadequacy of Existing Regulatory Mechanisms

At the time this ESU was originally listed, most Federal and non-Federal regulatory efforts were not found to adequately protect coho salmon due to a variety of factors including uncertain funding and implementation, the voluntary nature of many programs, or simply their ineffectiveness. Detailed information on regulatory mechanisms and other protective efforts for coho salmon is provided in NMFS' Draft Recovery Plan for this ESU (NMFS, 2010) and the 1996 and 2005 final listing determinations for this ESU. Since the original listing determination for this ESU in 1996, few significant improvements in regulatory mechanisms have been made aside from efforts implemented under the ESA (i.e., NMFS' efforts under section 7 of the ESA and the designation of critical habitat for this ESU). A variety of State and Federal regulatory mechanisms exist to protect coho salmon habitat, but they have not been adequately implemented (61 FR 56138; October 31, 1996). Overall, we believe that most current regulatory mechanisms and/or other protective efforts are not sufficiently certain to be implemented and/or are not effective in reducing threats to coho salmon in this ESU (70 FR 37160; June 28, 2005).

In Soquel and Aptos creeks, one recent beneficial regulatory change has been the termination of funding for Santa Cruz County's in-stream wood removal program in 2009. Curtailment of this program is expected to eventually result in improvements to summer and winter rearing habitat for coho salmon in the County. Problems with other regulatory efforts, including poor oversight and enforcement of State water law pertaining to permitted and unpermitted diversions, are a significant concern in Soquel and Aptos creeks.

E. Other Natural or Human-Made Factors Affecting Its Continued Existence

Long-term trends in rainfall and marine productivity associated with atmospheric conditions in the North Pacific Ocean have a major influence on coho salmon production on the West Coast. Natural climatic conditions may have exacerbated or mitigated the problems associated with degraded and altered freshwater and estuarine habitats that coho salmon depend upon (69 FR 33102). Detailed discussions of these factors can be found the 1996 and 2005 listing determinations for this ESU (61 FR 56138, October 31, 1996 and 70 FR 37160, June 28, 2005, respectively). No significant changes to this listing factor have occurred since the original listing, although the risk of climate change may well have increased.

The best available scientific information indicates that the Earth's climate is warming, driven by the accumulation of greenhouse gasses in the atmosphere (Oreskes, 2004; Battin *et al.,* 2007; Lindley *et al.,* 2007). Because coho salmon depend upon freshwater streams and the ocean during their life cycle, most if not all populations in this ESU, including those in Soquel and Aptos creeks, are likely to be impacted by climate change in the decades ahead, though the type and magnitude of these impacts are difficult to predict at this time.

Final Determination

Based on a consideration of the best available information, including new information on the presence of coho salmon in Soquel Creek, genetic data indicating the fish from Soquel Creek are closely related to fish from nearby watersheds, the similarity of habitat in Soquel and Aptos creeks to that in nearby watersheds presently or historically supporting coho salmon, and the proximity of Soquel and Aptos creeks to nearby watersheds supporting coho salmon, we conclude that the southern boundary of the CCC coho salmon ESU should be moved southward to include Soquel and Aptos creeks in Santa Cruz County, California. Based on an updated status assessment of coho salmon populations throughout the range of the ESU, including the recent discovery of juvenile coho salmon in Soquel Creek, and consideration of the factors affecting this species throughout the range of the ESU, we conclude that the redefined ESU continues to be an endangered species.

Section 9 Take Prohibitions and Other Protections

The CCC coho salmon ESU is an endangered species and Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. The section 9(a) prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species such as the CCC coho salmon ESU, throughout its range. As a result of this range extension, the section 9 take prohibitions now will apply to all naturally produced coho salmon in Soquel and Aptos creeks.

Section 7(a) of the ESA, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the ESA are codified at 50 CFR part 402. Section 7(a)(4) of the ESA requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us under the provisions of section 7(a)(2). Federal agencies and actions that may be affected by the revision of the CCC coho salmon ESU include the U.S. Army Corps of Engineers and its issuance of permits under the Clean Water Act.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide us with authority to grant exceptions to the ESA's ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of the affected species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for listed salmonids, including CCC coho salmon, to conduct activities such as trapping and tagging and other research and monitoring activities.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities conducting activities that may incidentally take listed species so long as the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include, but are not limited to, state-regulated angling, academic research not receiving Federal authorization or funding, road building, timber management, grazing, and diverting water onto private lands.

NMFS' Policies on Endangered and Threatened Fish and Wildlife

NMFS and the FWS published a policy in the **Federal Register** on July 1, 1994 (59 FR 34272) indicating that both agencies would identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species range. Based on the best available information, we believe that the following actions are unlikely to result in a violation of section 9 for coho salmon in this ESU, including Soquel and Aptos creeks:

1. Any incidental take of listed fish from this ESU resulting from an otherwise lawful activity conducted in accordance with the conditions of an incidental take permit issued by NMFS under section 10 of the ESA;
2. Any action authorized, funded, or carried out by a Federal agency that is likely to adversely affect listed fish from this ESU when the action is conducted in accordance with the terms and conditions of an incidental take statement issued by NMFS under section 7 of the ESA;
3. Any action carried out for scientific purposes or to enhance the propagation or survival of listed fish from this ESU that is conducted in accordance with the conditions of a permit issued by NMFS under section 10 of the ESA

Activities that are likely to result in a violation of section 9 prohibitions against the ''taking'' of fish from this ESU include, but are not limited to, the following:

1. Unauthorized killing, collecting, handling, or harassing of individual fish from this ESU;
2. Land-use activities that adversely affect habitats supporting coho salmon, such as logging, development, road construction in riparian areas and in areas susceptible to mass wasting and surface erosion;
3. Destruction/alteration of the habitats supporting coho salmon, such as removal of large woody debris and ''sinker logs'' or riparian shade canopy, dredging, discharge of fill material, sandbar breaching, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow;
4. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting coho salmon in the ESU;
5. Violation of discharge permits into the ESU;
6. Application of pesticides affecting water quality or riparian areas supporting coho salmon in the ESU;
7. Introduction of non-native species likely to prey on coho salmon within the ESU or displace them from their habitat.

Other activities not identified here will be reviewed on a case-by-case basis to determine if violation of section 9 of the ESA may be likely to result from such activities. Questions regarding whether specific activities may constitute a violation of the section 9 take prohibition, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**). We do not consider these lists to be exhaustive and we provide them as general information to the public.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for peer review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act, is intended to enhance the quality and credibility of the Federal Government's scientific information and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the scientific information compiled in the BRT report (Spence *et al.*, 2011) that supports the proposed range extension and the continued listing of the CCC coho salmon ESU as an endangered species. The peer reviewers provided only limited, minor comments which were addressed in the final BRT report.

A joint NMFS/U.S. Fish and Wildlife policy (59 FR 34270; July 1, 1994) requires us to solicit independent expert review from at least three qualified specialists on proposed listing determinations such as this range extension. Accordingly, we solicited reviews from three scientific peer reviewers having expertise with coho salmon in California and received comments from all three reviewers. We carefully reviewed the peer review comments and have addressed them as appropriate in this final rule (see summary of peer review comments above).

Critical Habitat

Critical habitat is defined in section 3 of the ESA as: ''(i) The specific areas within the geographic area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species'' (16 U.S.C. 1532(5)(A)). Conservation means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Section 4(b)(2) requires that designation of critical habitat be based on the best scientific data available, after taking into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat.

Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize, or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure that their actions do not jeopardize the continued existence of the listed species.

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. Critical habitat for the CCC coho salmon ESU was designated on May 5, 1999 (64 FR 24049) and presently includes all river reaches accessible to coho salmon in rivers between Punta Gorda and the San Lorenzo River. Within these streams, critical habitat includes all waterways, substrate and adjacent riparian habitat below longstanding, natural impassable

barriers and some specific dams. Critical habitat is not presently being proposed for designation in Soquel and Aptos creek watersheds. Prior to making any determination regarding the designation of critical habitat in these watersheds, we will complete an analysis to determine if habitat in Soquel and Aptos creeks should be designated and whether any modification of the existing critical habitat designation is warranted. Following completion of this analysis, NMFS may initiate rulemaking to designate critical habitat in these watersheds. Any such proposed rule will provide an opportunity for public comments and a public hearing, if requested.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 675 F. 2nd 829 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (See NOAA Administrative Order 216–6).

Regulatory Flexibility Act, Executive Order 12866, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 Amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the ESA listing process. Thus, this final rule is also exempt from review under Executive Order 12866. This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, development of this rule included coordination with the State of California through the CDFG.

List of Subjects in 50 CFR Part 224

Endangered marine and anadromous species.

Dated: March 27, 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 224 is amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 12 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. Revise the entry for ''Central California Coast coho,'' in § 224.101(a) to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(a) * * *

Species [1]		Where listed	Citation(s) for listing determinations	Citations(s) for critical habitat Designations
Common name	Scientific name			
*	*	* * *	*	*
Central California Coast coho.	*Oncorhynchus kitsutch.*	U.S.A., CA, including all naturally spawning populations of coho salmon from Punta Gorda in northern California south to and including Aptos Creek in central California, as well as populations in tributaries to San Francisco Bay, excluding the Sacramento-San Joaquin River system, as well as three artificial propagation programs: the Don Clausen Fish Hatchery Captive Broodstock Program, Scott Creek/King Fisher Flats Conservation Program, and the Scott Creek Captive Broodstock Program.	[INSERT FR CITATION & April 2, 2012.	64 FR 24049; May 5, 1999.
*	*	* * *	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

[FR Doc. 2012–7860 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket Nos. 100610255–0257–01 and 040205043–4043–01]

RIN 0648–XB074

2012 Accountability Measures for Gulf of Mexico Commercial Greater Amberjack and Closure of the Commercial Sector for Greater Amberjack

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for commercial greater amberjack in the Gulf of Mexico (Gulf) for the 2012 fishing year through this temporary final rule, and announces the closure of the 2012 commercial sector for greater amberjack of the Gulf reef fish fishery. This rule reduces the 2012 commercial quota for greater amberjack to 237,438 lb (107,700 kg), based on the 2011 quota overage. The commercial fishing season opened on January 1, 2012 and is closed March 1–May 31. The season is scheduled to re-open on June 1, however, NMFS has determined that the 2012 adjusted commercial quota for Gulf greater amberjack was harvested in January and February of 2012. Therefore, the commercial sector for greater amberjack will remain closed for the remainder of the 2012 fishing year. These actions are necessary to reduce overfishing of the Gulf greater amberjack resource.

DATES: This rule is effective April 2, 2012, through December 31, 2012.

ADDRESSES: Copies of the final rule for Amendment 30A, the Final Supplemental Environmental Impact Statement (FSEIS) for Amendment 30A, and other supporting documentation may be obtained from Rich Malinowski, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727–824–5305.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, telephone: 727–824–5305, email *Rich.Malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the reef fish fishery of the Gulf under the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP). The Gulf of Mexico Fishery Management Council (Council) prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The 2006 reauthorization of the Magnuson-Stevens Act established new requirements including annual catch limits (ACLs) and AMs to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and correct or mitigate overages of the ACL if they occur. Section 303(a)(15) of the Magnuson-Stevens Act mandates the establishment of ACLs at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

On July 3, 2008, NMFS issued a final rule (73 FR 38139) to implement Amendment 30A to the FMP. Amendment 30A established commercial and recreational quotas for Gulf greater amberjack and AMs that would go into effect if the commercial and recreational quotas for greater amberjack are exceeded. In accordance with regulations at 50 CFR 622.49(a)(1)(i), when the applicable commercial quota is reached, or projected to be reached, the Assistant Administrator for Fisheries, NOAA, (AA), will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. If despite such closure, commercial landings exceed the quota, the AA will reduce the quota the year following an overage by the amount of the overage of the prior fishing year.

Management Measures Contained in this Temporary Rule

Finalized 2011 commercial landings data indicated the adjusted 2011 commercial quota of 342,091 lb (155,170 kg) was exceeded by 78 percent, or 265,562 lb (120,457 kg). Therefore, the reduced 2012 commercial quota for Gulf greater amberjack is 237,438 lb (107,700 kg) (*i.e.,* 503,000-lb (228,157-kg) commercial quota minus the overage of 265,562 lb (120,457 kg)). The NMFS Southeast Fisheries Science Center estimated that the commercial sector landed 221,789 lb (100,601 kg) of greater amberjack during the months of January and February of 2012, and projects subsequent updates to the landings data will meet the adjusted 2012 commercial sector quota for greater amberjack of 237,438 lb (107,700 kg).

Accordingly, NMFS is closing commercial sector harvest of greater amberjack in the Gulf EEZ for the remainder of the 2012 fishing year. The operator of a vessel with a valid commercial vessel permit for Gulf reef fish having greater amberjack aboard must have landed, bartered, traded, or sold such greater amberjack prior to 12:01 a.m., local time, March 1, 2012.

During the closure, all commercial harvest or possession of greater amberjack in or from the Gulf EEZ, and the sale or purchase of greater amberjack taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of greater amberjack that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, March 1, 2012, and were held in cold storage by a dealer or processor. In addition to the Gulf EEZ closure, a person on board a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with these closure provisions regardless of where the Gulf greater amberjack are harvested, *i.e.,* in State or Federal waters. This closure is intended to prevent overfishing of Gulf greater amberjack and increase the likelihood that the 2012 commercial quota will not be exceeded.

The 2013 commercial quota for greater amberjack will return to the quota of 503,000 lb (228,157 kg) specified at 50 CFR 622.42(a)(1)(v) unless AMs are implemented due to a quota overage and NMFS specifies a reduced quota through notification in the **Federal Register,** or the Council takes subsequent regulatory action to adjust the quota.

Classification

The Regional Administrator, Southeast Region, NMFS, (RA) has determined this temporary rule is necessary for the conservation and management of the Gulf greater amberjack component of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

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

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

NMFS prepared a Final Environmental Impact Statement (FEIS) for Amendment 30A. A notice of availability for the FEIS was published on April 18, 2008 (73 FR 21124). A copy

of the FEIS and the Record of Decision are available from NMFS (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the AMs established by Amendment 30A and located at 50 CFR 622.49(a)(1)(i) authorize the AA to file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year when the quota is reached or projected to be reached and reduce the commercial quota the following fishing year if an overage occurs. The final rule for Amendment 30A that implemented these AMs was already subject to notice and comment and all that remains is to notify the public of the 2012 commercial quota, and the closure of the commercial sector for Gulf greater amberjack.

Also, providing prior notice and opportunity for public comment on this action would be contrary to the public interest. Given the regulatory obligation for NMFS to announce the duration of the commercial season in a timely manner, it is important this announcement be made as soon as possible to allow affected participants the maximum amount of time to adjust their fishing activities to account for the closure of the commercial sector.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Dated: March 28, 2012.

Carrie Selberg,

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

[FR Doc. 2012–7851 Filed 3–28–12; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XB142

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels (CVs) using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2012 Pacific cod total allowable catch apportioned to CVs using trawl gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 2012, through 1200 hrs, A.l.t., September 1, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2012 Pacific cod total allowable catch (TAC) apportioned to CVs using trawl gear in the Central Regulatory Area of the GOA is 8,936 metric tons (mt), as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2012 Pacific cod TAC apportioned to CVs using trawl gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,936 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by CVs using trawl gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

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 at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod for CVs using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 26, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 28, 2012.

Carrie Selberg,

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

[FR Doc. 2012–7841 Filed 3–28–12; 4:15 pm]

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Proposed Rules

Federal Register
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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

Food Safety and Inspection Service

9 CFR Parts 307 and 381

[Docket No. FSIS–2011–0032]

RIN 0583–AD48

Additional Changes to the Schedule of Operations Regulations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Correction.

SUMMARY: On March 19, 2012, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the meat and poultry products regulations pertaining to the schedule of operations. The Regulatory Identification Number (RIN) was inadvertently omitted. The RIN number for this proposed rule is 0583–AD48. Comments on the March 19 proposed rule must still be received by the agency on or before April 18, 2012, to be assured of consideration.

DATES: Submit comments on or before April 18, 2012.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2012–0013. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street, Room 8–164, Washington, DC 20250–3700 between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Assistant Administrator, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–3700, telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Need for Correction

On March 19, 2012 (77 FR 15976), the Food Safety and Inspection Service published a proposed rule. Due to an editing error, the RIN number was omitted. The RIN number for this rule is 0583–AD48.

Done at Washington, DC, on March 23, 2012.

Alfred Almanza,

Administrator.

[FR Doc. 2012–7753 Filed 3–30–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0330; Directorate Identifier 2011–NM–116–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B Airplanes. This proposed AD was prompted by reports indicating that wear of the elevator pushrods have occurred on some airplanes after extended time in service. This proposed AD would require determining if a certain part number is installed, performing a detailed inspection for individual play between the elevator pushrod assembly and degradation of elevator pushrod assembly, and replacing the affected elevator pushrod assembly with a new elevator pushrod assembly if necessary. We are proposing this AD to prevent a free elevator from affecting the pitch control authority, which may result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 17, 2012.

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

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

For service information identified in this proposed AD, contact Saab AB, Saab Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The

street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0330; Directorate Identifier 2011–NM–116–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0078, dated May 5, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Field experience has indicated that wear of the elevator pushrod has occurred on some aeroplanes after extended time in service. Although properly installed, the locknut has been able to back off within a limited range, leading to degradation of the pushrod which causes backlash in between the rod end threads.
>
> This condition, if not detected and corrected, may lead to a free elevator affecting the pitch control authority, possibly resulting in reduced control of the aeroplane.
>
> To address this unsafe condition, SAAB AB Aeronautics have issued Service Bulletin (SB) 340–27–100, accomplishment of which will reduce the probability for backlash and minimize the possibility of failure in the pitch control system.
>
> For the reasons described above, this [EASA] AD requires the identification of the pushrod assembly Part Number (P/N) as installed on the aeroplane, replacement of P/N TDF11755 pushrod assemblies, inspection of P/N 12003–33 and P/N R20990 elevator pushrod assemblies [for individual play between the elevator pushrod assembly and degradation of elevator pushrod assembly] and corrective actions [replacement], depending on findings.

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

Relevant Service Information

Saab AB, Saab Aerosystems has issued Saab Service Bulletin 340–27–100, dated February 1, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 162 products of U.S. registry. We also estimate that it would take about 1 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $13,770, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 7 work-hours and require parts costing $1,588 for a cost of $2,183 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab AB, Saab Aerosystems: Docket No. FAA–2012–0330; Directorate Identifier 2011–NM–116–AD.

(a) Comments Due Date

We must receive comments by May 17, 2012.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

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

(e) Reason

This AD was prompted by reports indicating that wear of the elevator pushrods have occurred on some airplanes after extended time in service. We are issuing this AD to prevent a free elevator from affecting the pitch control authority, which may result in reduced controllability of the airplane.

(f) Compliance

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

(g) Inspection to Determine the Part Number

Within the applicable time specified in table 1 of this AD, inspect each elevator pushrod assembly to determine the part number (P/N).

(1) If a P/N TDF11755 elevator pushrod assembly is installed, or if the part number cannot be determined: Before further flight, replace the affected elevator pushrod assembly with a P/N R20990 elevator pushrod assembly, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–100, dated February 1, 2011.

(2) If P/N 12003–33 or P/N R20990 elevator pushrod assembly is installed: Do a detailed inspection for individual play between the rod end and the pushrod at the locking device and degradation of elevator pushrod assembly (including rod end threads not visible through the inspection hole in the pushrod, and the nut and locking device not properly locked with the lock wire), in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–100, dated February 1, 2011.

TABLE 1—*Compliance time*

Total flight hours accumulated as of the effective date of this AD	Compliance time
For airplanes with 30,000 total flight hours or more	Within 6 months after the effective date of this AD.
For airplanes with 28,000 total flight hours or more, but less than 30,000 total flight hours.	Before the accumulation of 30,000 total flight hours or within 6 months after the effective date of this AD, whichever occurs later.
For airplanes with less than 28,000 total flight hours	Before the accumulation of 30,000 total flight hours.

(h) Corrective Action

If, during the inspection of elevator pushrod assembly required by paragraph (g)(2) of this AD, individual play between the rod end and the pushrod at the locking device, or degradation of the elevator pushrod assembly (including rod end threads not visible through the inspection hole in the pushrod, and the nut and locking device not properly locked with the lock wire) is found: Before further flight, replace the affected elevator pushrod assembly with a new elevator pushrod assembly, P/N R20990, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–100, dated February 1, 2011.

(i) Parts Installation

As of the effective date of this AD, no person may install an elevator pushrod assembly with P/N TDF11755, on any airplane.

(j) Reporting Requirement

Submit a report of the findings (both positive and negative) of the inspection and replacement required by paragraphs (g) and (h) of this AD to Saab AB, Support and Services, SE–581 88 Linköping, Sweden; fax +46 13 18 48 74; email *saab340.techsupport@saabgroup.com;* at the applicable time specified in paragraph (j)(1) or (j)(2) of this AD.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(l) Related Information

Refer to MCAI EASA Airworthiness Directive 2011–0078, dated May 5, 2011; and Saab Service Bulletin 340–27–100, dated February 1, 2011; for related information.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–7769 Filed 3–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0329; Directorate Identifier 2011–NM–139–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A318–112 and –121 airplanes; Model A319–111, –112, –115, –132, and –133 airplanes; Model A320–

214, –232, and –233 airplanes; and Model A321–211, –212, –213, and –231 airplanes. This proposed AD was prompted by reports of cracked nuts on the fuselage. This proposed AD would require an inspection to determine if certain fuselage nuts are installed, a detailed inspection for cracking of fuselage nuts having a certain part number, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct cracked nuts on the fuselage which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by May 17, 2012.

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

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0329; Directorate Identifier 2011–NM–139–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0120R1, dated July 13, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During structural part assembly in Airbus production line, some nuts Part Number (P/N) ASNA2531–4 were found cracked. Investigations were performed to determine the batches of the affected nuts and had revealed that these nuts have been installed in production on the fuselage of aeroplanes listed in the applicability section of this [EASA] AD.
>
> Static, fatigue and corrosion tests were performed, which demonstrated that no immediate maintenance action is necessary. However, a large number of these nuts are fitted on primary structural elements, which could have long-term consequences.
>
> This condition, if not corrected, could impair the structural integrity of the affected aeroplanes.
>
> For the reasons described above, this [EASA] AD requires [an inspection to determine if certain fuselage nuts are installed,] a detailed inspection [for cracking] of the affected nuts, associated corrective actions, [general visual inspection for scratching of the hole if necessary] depending on findings, and replacement of the affected P/N ASNA2531–4 nuts with new ones, having the same P/N.
>
> * * * * *

Required actions include related investigative and corrective actions if necessary. Related investigative actions include a general visual inspection for scratching of the hole. Corrective actions include replacing the fastener and installing a new fuselage nut. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A320–53–1218, Revision 01, including Appendices 01 and 02, dated June 17, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 152 products of U.S. registry. We also estimate that it would take about 15 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $193,800, or $1,275 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours and require parts costing $362, for a cost of $1,212 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2012–0329; Directorate Identifier 2011–NM–139–AD.

(a) Comments Due Date

We must receive comments by May 17, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A318–112 and –121 airplanes; Model A319–111, –112, –115, –132, and –133 airplanes; Model A320–214, –232, and –233 airplanes; and Model A321–211, –212, –213, and –231 airplanes; certificated in any category; manufacturer serial numbers 3339, 3340, 3350, 3355, 3360, 3367, 3369, 3372, 3380, 3382, 3385, 3387, 3388, 3390, 3393, 3395, 3397 through 3508 inclusive, 3510 through 3519 inclusive, 3522, 3523, 3525, 3527, 3529, 3530, 3537, 3539, 3542, 3544, 3546, 3548, 3552, and 3555.

(d) Subject

Air Transport Association (ATA) of America Code 53: Fuselage.

(e) Reason

This AD was prompted by reports of cracked nuts on the fuselage. We are issuing this AD to detect and correct cracked nuts on the fuselage which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Inspection and Replacement

Within 72 months since first flight of the airplane or within 90 days after the effective date of this AD, whichever occurs later, do an inspection for nuts having part number (P/N) ASNA2531–4 located in the fuselage. If a nut having P/N ASNA2531–4 is found, before further flight, do a detailed inspection for cracking of the nut, and all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1218, Revision 01, including Appendices 01 and 02, dated June 17, 2010. If any cracking is found, before further flight, repair, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1218, Revision 01, including Appendices 01 and 02, dated June 17, 2010.

(h) Reporting

Submit a report of the findings in accordance with Appendix 01 of the inspection required by paragraph (g) of this AD to Airbus in accordance with Appendix 01 of Airbus Service Bulletin A320–53–1218, Revision 01, including Appendices 01 and 02, dated June 17, 2010, at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for inspections and replacements required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1218, including Appendices 01 and 02, dated February 8, 2010.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–227–1405; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(k) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0120R1, dated July 13, 2011; and Airbus Service Bulletin A320–53–1218, Revision 01, including Appendices 01 and 02, dated June 17, 2010; for related information.

Issued in Renton, Washington, on March 22, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–7770 Filed 3–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0169]

RIN 1625–AA08

Special Local Regulation for Marine Events, Chesapeake Bay Workboat Race, Back River, Messick Point; Poquoson, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation during the Chesapeake Bay Workboat Race, a series of boat races to be held on the waters of Back River, Poquoson, Virginia on June 24, 2012. This event will consist of approximately 75 powerboats conducting high-speed competitive races on the waters of the Back River. This regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Back River, Messick Point, Poquoson, Virginia during the event.

DATES: Comments and related material must be received by the Coast Guard on or before May 2, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0169 using any one of the following methods:

(1) *Federal eRulemaking 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 If you have questions on this temporary rule, call or email LCDR Christopher O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Christopher.A.ONeal@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–2012–0169), 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 *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,* type the docket number (USCG–2012–0169) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. 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,* type the docket number (USCG–2012–0169) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. 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.

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 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**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LCDR Christopher O'Neal at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

Marine events are frequently held on the navigable waters within the boundary of Fifth Coast Guard District. The water activities that typically comprise marine events include sailing regattas, power boat races, swim races and holiday parades. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation proposes to add an enforcement period of a new special local regulation for one marine event within Fifth Coast Guard District.

On June 24, 2012, the Chesapeake Bay Workboat Race Committee will sponsor the ''2012 Chesapeake Bay Workboat Races'' on the waters of Back River. The event will consist of approximately 75 powerboats conducting high-speed competitive races on the waters of Back River, Messick Point, Poquoson, VA. A fleet of spectator vessels is expected to gather near the event site to view the competition. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the races. The regulation at 33 CFR 100.501 would be enforced for the duration of the event. Under the provisions of 33 CFR 100.501, from 11 a.m. to 5 p.m. on June 24, 2012, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Proposed Rule

The Coast Guard is establishing a temporary special local regulation on specified waters of the Back River, Messick Point in Poquoson, Virginia. The regulated area will be established in the interest of public safety during the ''Chesapeake Bay Workboat Race'', and will be enforced from 11 a.m. to 5 p.m. on June 24, 2012. The Coast Guard, at its discretion, when practical, will allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

This regulation would establish an enforcement location to include all waters of the Back River, Poquoson, Virginia, bounded to the north by a line drawn along latitude 37°06′30″ N, bounded to the south by a line drawn along latitude 37°16′15″ N, bounded to the east by a line drawn along longitude 076°18′52″ W and bounded on the west by a line drawn along longitude 076°19′30″ W.

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.

Regulatory Planning and Review

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, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this rule prevents traffic from transiting a portion of certain waterways during specified times, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. In some cases, vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

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: the owners or operators of vessels intending to transit this section of the Back River during the event.

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. This regulation will not have a significant impact on a substantial number of small entities because: (i) It will be enforced only for a short period of time (six hours); (ii) vessels may be granted the opportunity to transit the safety zone during the period of enforcement if the Patrol Commander deems it safe to do so; (iii) vessels may transit around the safety zone; and (iv) before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

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 LCDR Christopher O'Neal. 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 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. We have analyzed this proposed rule under that Order and determined that this rule 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 an 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 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 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 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)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 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.

2. In § 100.501, Table to § 100.501, add temporary line No. 26 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

* * * * *

Table To § 100.501.—All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.

COAST GUARD SECTOR HAMPTON ROADS—COTP ZONE

No.	Date	Event	Sponsor	Location
	*	*	*	* * * *
26	June 24, 2012—11 a.m. to 5 p.m.	2012 Chesapeake Bay Workboat Race.	Chesapeake Bay Workboat Race Committee.	The regulated area includes all waters of the Back River, Poquoson, Virginia, bounded to the north by a line drawn along latitude 37°06′30″ N, bounded to the south by a line drawn along latitude 37°16′15″ N, bounded to the east by a line drawn along longitude 076°18′52″ W and bounded on the west by a line drawn along longitude 076°19′30″ W. All coordinates reference Datum NAD 1983.

* * * * *

Dated: March 13, 2012.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2012–7790 Filed 3–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0130]

RIN 1625–AA00

Safety Zone; Wedding Fireworks Display, Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of the Boston Inner Harbor in the vicinity of Anthony's Pier 4, Boston, MA for a wedding fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before May 2, 2012. Requests for public meetings must be received by the Coast Guard on or before April 9, 2012. The Coast Guard anticipates that this proposed rule will be effective from 8 p.m. to 11 p.m. on May 19, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0130 using any one of the following methods:

(1) *Federal eRulemaking 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. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil* or Lieutenant Junior Grade Isaac Slavitt, Coast Guard First District Waterways Management Branch, telephone 617–223–8385, email *Isaac.M.Slavitt@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–2012–0130), 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 *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–2012–0130'' 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–2012–0130'' 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 by 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. 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

This proposed safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

Discussion of Proposed Rule

Ocean State Pyrotechnics, Inc is sponsoring a wedding fireworks display on the waters of Boston Inner Harbor in the vicinity of Anthony's Pier 4, Boston, MA. The Captain of the Port (COTP) Boston has determined that fireworks displays in close proximity to watercraft and waterfront structures pose a significant risk to public safety and property. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm. Establishing a safety zone around the location of this fireworks event will help ensure the safety of spectators, vessels and other property and help minimize the associated risks. This proposed safety zone will encompass a 450-foot radius around the firework barge.

The fireworks display will occur from approximately 8:30 p.m. until 10:30 p.m. on May 19, 2012. To ensure public safety the proposed safety zone will be enforced immediately before, during, and immediately after the fireworks launch. If the event is cancelled due to inclement weather, then the proposed safety zone will not be enforced.

All persons and vessels shall comply with the instructions of the COTP or the designated on-scene representative. Entry into, transiting, or anchoring within the regulated area is prohibited unless authorized by the COTP or the designated on-scene representative. The COTP Boston or the on-scene representative may be contacted via VHF Channel 16.

The Final Rule will not be published 30 days before the event and the effective date of this proposed rule as is generally required by 5 U.S.C. 553(d)(3). The Coast Guard will accept comments on this shortened period and address them in the final rule.

Public notifications will be made prior to the event via appropriate means, and may include the Local Notice to Mariners and marine information broadcasts.

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 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.

This determination is based on the limited time that vessels will be restricted from the fireworks display area. The safety zone will be in effect for approximately three hours during the evening hours. The Coast Guard expects minimal adverse impact to mariners from the activation of the zone as information on the event will be extensively advertised in the public, affected mariners may request authorization from the COTP or the designated on-scene representative to transit the zone, and advance notification will be made to the maritime community via Local Notice to Mariners and Broadcast Notice to Mariners.

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 will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the Boston Inner Harbor in the vicinity of Anthony's Pier 4, Boston, MA during the effective period.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only three hours on a single day during the late evening and vessels will be able to transit around the safety zone. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have 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 1–888–REG–FAIR (1–888–734–3247). 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 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 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 is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishment of a safety zone on the waters of the East River during a firework works display. This rule appears to be categorically excluded, under figure 2–1, paragraph (34)(g), 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 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 proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01–0130 to read as follows:

§ 165.T01–0130 Safety Zone; Wedding Fireworks Display, Boston Inner Harbor, Boston, MA.

(a) *Regulated Area.* The following area is a temporary safety zone: All navigable waters from surface to bottom, within a 450-foot radius of position 42°21′19″ N, 071°02′32″ W. This position is located approximately 450-feet off of Anthony's Pier 4, Boston Inner Harbor Boston, MA.

(b) *Definitions.* For purposes of this section ''Designated on-scene representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Boston (COTP) to act on the COTP's behalf.

(c) *Effective Period.* This rule will be effective and will be enforced from 8 p.m. to 11 p.m. on May 19, 2012.

(d) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to enter into, transit, or anchor within the safety zone without the permission of the COTP or the designated on-scene representative.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617–223–3201 (Sector Boston Command Center) to obtain permission.

(5) Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP or the designated on-scene representative.

Dated: March 15, 2012.

J.N. Healey,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2012–7782 Filed 3–30–12; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 12–69; FCC 12–31]

Promoting Interoperability in the 700 MHz Commercial Spectrum; Interoperability of Mobile User Equipment Across Paired Commercial Spectrum Blocks in the 700 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on whether the customers of Lower 700 MHz B and C Block licensees would experience harmful interference—and if so, to what degree—if the Lower 700 MHz band were interoperable. The Commission also explores the next steps should it find that interoperability would cause

limited or no harmful interference to Lower 700 MHz B and C Block licensees, or that such interference can reasonably be mitigated through industry efforts and/or through modifications to the Commission's technical rules or other regulatory measures. The Commission initiates this proceeding to promote interoperability in the Lower 700 MHz band and to encourage the efficient use of spectrum.

DATES: Interested parties may file comments on or before June 1, 2012, and reply comments on or before July 16, 2012.

ADDRESSES: You may submit comments, identified by WT Docket No. 12–69, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brenda Boykin, Wireless Telecommunications Bureau, (202) 418–2062, email *Brenda.Boykin@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WT Docket No. 12–69, adopted March 21, 2012, and released March 21, 2012. The full text of the NPRM is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Copies of the NPRM also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket No. 12–69. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

I. Introduction

1. The Communications Act directs the Commission to, among other things, promote the widest possible deployment of communications services, ensure the most efficient use of spectrum, and protect and promote vibrant competition in the marketplace. On each occasion where the Commission has made available new spectrum for mobile telephony and/or broadband, it has strived to meet these important goals. This was the case when the Commission launched its proceeding to free up the 700 MHz band for commercial mobile services, as it expressly recognized the need to ''balance several competing goals, including facilitating access to spectrum by both small and large providers, providing for the efficient use of the spectrum, and better enabling the delivery of broadband services in the 700 MHz Band.''

2. Since the completion of the 700 MHz auction and the subsequent clearing of the spectrum, however, certain Lower 700 MHz A Block licensees have asserted that the development of two distinct band classes within the Lower 700 MHz band has hampered their ability to have meaningful access to a wide range of advanced devices. The result, they argue, is that this spectrum is being built out less quickly than anticipated (and in some cases not at all), so that a large number of Lower 700 MHz A Block licensees are unable to provide the level of service and degree of competition envisioned at the close of the auction and as contemplated by the Communications Act. The 700 MHz band, at 70 megahertz, one of the largest commercial mobile service bands, is the only non-interoperable commercial mobile service band.

3. The record to date in response to the underlying Petition for Rulemaking reveals disagreement over the rationale for the distinct band classes, and the wisdom of maintaining both. At its core, the dispute is whether a unified band class would result in harmful interference to Lower 700 MHz licensees in the B and C Blocks and whether, if harmful interference exists, it reasonably can be mitigated.

4. There is express agreement, however, that a unified band class across the Lower 700 MHz band has the potential to yield significant benefits for all licensees. Indeed, as AT&T, the primary holder of Lower B and C Block licenses, affirmed in a recent letter to the Commission, ''[AT&T] indeed anticipate[s] that there would be increased opportunity [if interference concerns were addressed] for commercial relationships with A Block licensees.'' Unfortunately, no industry-led solution to the lack of interoperability has yet emerged.

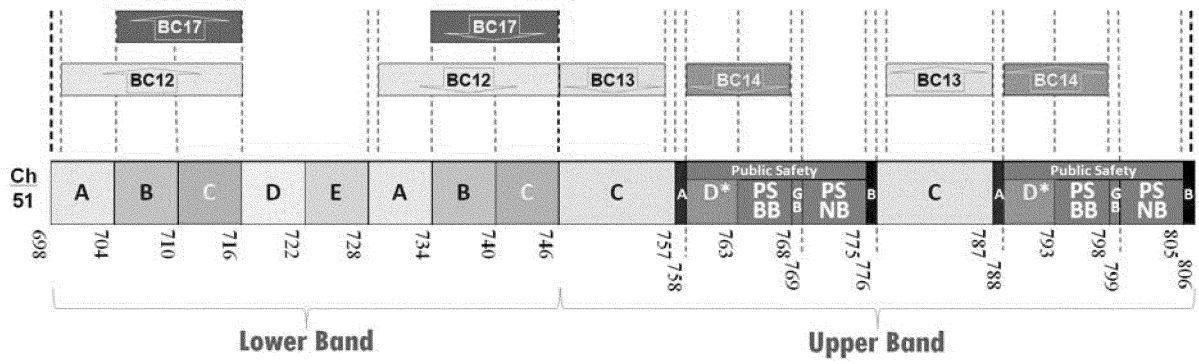
5. Therefore, the Commission initiates this rulemaking proceeding to promote interoperability in the Lower 700 MHz band and to encourage the efficient use of spectrum.[1] The Commission will evaluate whether the customers of Lower 700 MHz B and C Block licensees would experience harmful interference—and if so, to what degree—if the Lower 700 MHz band were interoperable. The Commission also explores the next steps should it find that interoperability would cause limited or no harmful interference to Lower 700 MHz B and C Block licensees, or that such interference can reasonably be mitigated through industry efforts and/or through modifications to the Commission's technical rules or other regulatory measures.

II. Background

6. *700 MHz Band.* The 700 MHz band (698–806 MHz), illustrated in the following figure, is comprised of 70 megahertz of commercial, non-guard band spectrum, 4 megahertz of guard band spectrum, 24 megahertz of public safety: Spectrum, and 10 megahertz of spectrum that will be reallocated for public safety use pursuant to recent Congressional mandate.

[1] The Commission has a longstanding interest in promoting the interoperability of mobile user equipment in a variety of contexts as a means to promote the widest possible deployment of mobile services, ensure the most efficient use of spectrum, and protect and promote competition.

700 MHz Band Plan & 3GPP Band Classes



"BCxx" indicates Band Classes proposed as part of the international 3GPP industry LTE technical standards processes.
* The D Block will be reallocated for use by public safety entities as directed by the Middle Class Tax Relief and Job Creation Act of 2012

7. As shown above, the Lower 700 MHz band spectrum (698–746 MHz) consists of 48 megahertz of commercial spectrum, with three blocks of 12 megahertz each of paired spectrum (Lower A, B, and C Blocks), and two blocks of 6 megahertz each of unpaired spectrum (Lower D and E Blocks). The Lower A Block spectrum is adjacent to Channel 51 (692–698 MHz), which has been allocated for TV broadcast operations at power levels of up to 1000 kW.[2] The Lower A Block is also adjacent to the unpaired Lower 700 MHz E Block, where licensees (along with Lower 700 MHz D Block licensees) may operate at power levels up to 50 kW.[3] The Upper 700 MHz band (746–806 MHz) consists of the C Block, which is comprised of 22 megahertz of paired spectrum for commercial use, two guard bands, the public safety allocation, and the D Block, which consists of 10 megahertz of paired spectrum that will be reallocated for use by public safety entities, in accordance with the Middle Class Tax Relief and Job Creation Act of 2012.

8. *Assignment of Licenses in the 700 MHz Band.* The Commission has assigned licenses for the 700 MHz band through several auction proceedings. The Commission auctioned licenses for the guard bands in the Upper 700 MHz band in 2000, and it initially auctioned licenses in the Lower C and D Blocks in 2002. In 2008, the Commission auctioned licenses in the Lower 700 MHz band A, B, and E Blocks, as well as the Upper 700 MHz band C Block.

9. *Performance Requirements.* In adopting rules for the 700 MHz band, the Commission's goals included promoting commercial access to 700 MHz band spectrum, as well as providing licensees with flexibility in the services to be offered and the technologies to be deployed. For the Lower 700 MHz C and D Block licenses that were auctioned in 2002, the Commission required licensees to provide ''substantial service'' to their license service areas no later than the end of the license term. In 2007, the Commission adopted performance requirements for licenses in the 700 MHz band that subsequently were auctioned in 2008, including Lower 700 MHz A Block. Specifically, Cellular Market Area (CMA)-based and Economic Area (EA)-based licensees are required to provide service sufficient to cover 35 percent of the geographic area of their licenses within four years and 70 percent of this area within ten years (the license term), and Regional Economic Area Grouping (REAG) licensees must provide service sufficient to cover 40 percent of the population of their license areas within four years and 75 percent of the population within ten years. For licensees that fail to meet the applicable interim benchmark, the license term is reduced by two years, which would require that the end-of-term benchmark be met within eight years, and the Commission may take other enforcement action. At the end of the license term, licensees that fail to meet the end-of-term benchmark are subject to a ''keep what you use'' rule, which will make unused spectrum available to other potential users.

10. *Development of 3GPP Technical Standards.* Industry standards for Long-Term Evolution (LTE) wireless broadband technology are developed by the 3rd Generation Partnership Project (3GPP), a consensus-driven international partnership of industry-based telecommunications standards bodies. 3GPP, established in 1998, is an industry-based group and it is not associated with any governmental agency.[4] In the Lower 700 MHz band, there are two different 3GPP operating bands:[5] Band Class 12, which covers operations in the Lower A, B, and C Blocks, and Band Class 17, which covers operations in the Lower B and C Blocks only. The spectrum to which Band Class 17 applies is a subset of the spectrum covered by Band Class 12. Entities involved in the creation of Band

[2] 47 CFR 73.622(f)(8). Maximum ERP of 1000 kW is allowed if antenna HAAT is at or below 365 meters. For higher HAAT levels, lower maximum ERP is allowed according to the ''Maximum Allowable ERP and Antenna Height for DTV Stations on Channels 14–59, All Zones'' table.

[3] 47 CFR 27.50(c)(7). Lower 700 MHz C, D, and E Block fixed and base stations may operate at total power levels up to 50 kW ERP in their authorized 6 megahertz spectrum blocks. In the recent ATT-Qualcomm transaction, in which AT&T acquired all of the Lower 700 MHz D Block licenses and Lower 700 MHz E Block licenses covering 70 million people, the Commission conditioned the assignment of these licenses on AT&T's compliance with the requirements that: (1) It operates on the associated spectrum under the same power limits and antenna height restrictions that apply to the Lower 700 MHz A, B, and C Block licensees; (2) it does not use the acquired licenses for uplink transmission; and (3) its operations on the associated spectrum avoid undue interference to operations of other Lower 700 MHz A, B, and C Block licensees, as specified therein. Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations, *Order,* WT Docket No. 11–18, 26 FCC Rcd 17589, 17616–18 paras. 61–68 (2011) (*AT&T/Qualcomm Order*).

[4] Its world-wide partners come from Asia, Europe, and North America. 3GPP's many technical specification groups meet in various countries throughout the year to carry out the organization's mission. *See* 3GPP—About 3GPP, *http://www.3gpp.org/-About-3GPP* (last visited Mar. 12, 2012). For the schedules of the meetings, *see* 3GPP—3GPP Calendar, *http://www.3gpp.org/3GPP-Calendar* (last visited Mar. 12, 2012).

[5] Hereinafter, the Commission refers to each 3GPP LTE Operating Band as a ''Band Class.'' For example, the Commission refers to 3GPP LTE Operating Band 12 as ''Band Class 12.''

Class 17 during 3GPP proceedings assert that it was necessary to create a separate band class for Lower 700 MHz B and C Block licenses in order to avoid interference issues from DTV in Channel 51 and high power operations in the E Block. In the Upper 700 MHz band, the Band Class 13 specification provides for operations in the Upper C Block, and Band Class 14 provides for operations in the public safety spectrum (including the Upper 700 MHz D Block). 3GPP has adopted certain technical specifications for user equipment operating in different 700 MHz bands. Output power and the OOBE specifications for LTE equipment are the same for all commercial paired frequencies in the Lower 700 MHz band.[6] The 3GPP specifications differ for receiver blocking requirements. The 3GPP specified requirements for receiver blocking are the same for Band Class 13 and Band Class 14 equipment, but Band Class 12 and Band Class 17 each have different and distinct blocking requirements, due to differences in each band's relative proximity to neighboring high-powered operations in the E block.[7]

11. *700 MHz Interoperability Petition for Rulemaking.* In late 2009, an alliance comprised of four Lower 700 MHz A Block licensees (Petitioners) filed a petition for rulemaking, asking the Commission to ''assure that consumers will have access to all paired 700 MHz spectrum that the Commission licenses, to act so that the entire 700 MHz Band will develop in a competitive fashion, and to adopt rules that prohibit restrictive equipment arrangements that are contrary to the public interest.'' Petitioners request the Commission to require that all mobile units for the 700 MHz band be capable of operating over all frequencies in the band. Petitioners further request ''an immediate freeze on the authorization of mobile equipment that is not capable of operation on all paired commercial 700 MHz frequencies.'' The Wireless Telecommunications Bureau sought comment on the Petition in 2010. *See* 75 FR 9210. All future filings concerning RM–11592 should be made in this docket, WT Docket No. 12–69.

12. The Commission received 18 comments and 13 reply comments in response to the Petition. Commenters are divided on the merits of the relief sought in the Petition. Commenters in support of the Petition include smaller, regional 700 MHz licensees, a coalition including Sprint Nextel and T-Mobile, trade associations representing rural and smaller providers, a coalition of public interest groups, and public safety associations. These supporters assert that the mobile devices currently being developed for AT&T and Verizon Wireless preclude supporting operation on Lower A Block spectrum and that this is contrary to the public interest and anti-competitive. They argue that small providers that acquired Lower band 700 MHz Block A spectrum are left without viable and widely usable equipment options. Thus, they contend that unless Verizon Wireless and AT&T are required to support Band Class 12 in their devices, Lower A Block licensees will not be able to obtain devices with competitive economies of scale. They also argue that requiring full 700 MHz support will maximize roaming opportunities. Specifically, Petitioners assert that a prerequisite for negotiating roaming agreements is the availability of capable devices and that there is no basis for negotiation if there are no mobile devices that work across 700 MHz frequency blocks. While the Petition requests interoperability across the entire 700 MHz band, subsequent filings from some of the proponents of an interoperability requirement, including parties to the Petition, have asked the Commission to first focus on establishing an interoperability requirement for the Lower 700 MHz band.

13. In their initial comments, parties such as AT&T and Verizon Wireless, device manufacturers Motorola and Qualcomm, and TIA, a manufacturer trade association, opposed the Petition. They argued that without Band Class 17 filtering, Lower 700 MHz B and C licensees will face greater levels of harmful interference. Further, they suggested that an interoperability requirement at that time, spring 2010, would have unnecessarily delayed the deployment of 700 MHz mobile broadband devices. They contended that the existing 3GPP band classes were crafted through an open process and are responsive to the realities of the engineering and manufacturing constraints of the Commission-defined spectrum blocks. Further, AT&T asserted that nothing prevents 700 MHz A Block licensees from negotiating roaming deals with any provider offering services on other 700 MHz blocks. AT&T also argued that even if A Block licensees will have greater difficulty or face higher costs in developing handsets for use on the A Block, those disadvantages are fully reflected in the lower prices A Block licensees paid to obtain A Block spectrum.

14. *Workshop on Interoperability.* Last year, to update the record and gather additional information, the Wireless Telecommunications Bureau held a workshop on the status and availability of interoperable mobile user equipment across commercial spectrum blocks in the 700 MHz band. Panelists included a range of industry experts, including licensees holding spectrum in different portions of the 700 MHz band, as well as public interest advocates and equipment manufacturers. In addition to exploring solutions for promoting the development and availability of equipment for the 700 MHz band, the workshop discussed providers' technology choices, such as the planned deployment of LTE, and how these technology choices affect equipment availability, competition, and roaming. Panelists discussed the technical feasibility of an interoperability condition, as well as how an interoperability requirement might affect such factors as device cost and performance, and the need for additional development and testing.

15. *Other Developments Regarding the 700 MHz Band.* On March 15, 2011, CTIA and RCA filed a petition for rulemaking and request for licensing freezes on Channel 51, urging the Commission to facilitate the deployment of wireless broadband services in the Lower 700 MHz A Block by providing a stable interference environment that allows licensees to plan network deployments. The petition noted the potential for interference between Channel 51 broadcast and Lower 700 MHz A Block licensees. On March 28, 2011, the Media Bureau requested comment on the petition, and in August 2011, the Media Bureau adopted a freeze on the filing of certain applications with respect to operations on Channel 51. The freeze covers (1) applications for low power television, TV translator, replacement translators, and Class A television facilities on Channel 51, and displacement applications on this channel; and (2) applications for minor change for low power and full power television stations on Channel 51.

[6] *See* §§ 6.2.2, 6.6.2, and 6.6.2.2.3 of 3GPP TS 36.101 V9.9.0 (2011–09). The class 3 devices (UE) maximum transmit power is 23dBm for all bands with ±2dB tolerance, and Table 6.6.2.2.3–1 specifies the spectrum emission limits for available channel bandwidths.

[7] Receiver blocking requirements address a receiver's ability to receive at least 95% of the maximum throughput at its assigned channel in the presence of an unwanted interfering signal falling into the device receive band or into the first adjacent 15 megahertz. *See* Table 7.6.1.1–2, Section 7.6.1 of 3GPP TS 36.104 V9.9.0 (2011–09). Unlike Band Class 17, 3GPP determined that Band Class 12 cannot achieve the typical minimum specification for blocking interference from the Lower 700 MHz E Block, so this requirement was omitted from the Band 12 technical specification.

16. *AT&T/Qualcomm Transaction.* On January 13, 2011, AT&T and Qualcomm filed an application for Commission consent to the assignment or transfer of control of all eleven of Qualcomm's D and E Block licenses in the Lower 700 MHz band to AT&T. The Commission sought comment on the proposed transaction. Several parties asked the Commission to impose requirements relating to device interoperability as a condition of approving the transaction. After examination of the record, the Commission approved the assignment on December 22, 2011, but declined to adopt an interoperability condition. The Commission observed that even assuming that the lack of Lower 700 MHz interoperability causes significant competitive harm, such harm already existed independent of the license transfer applications. The Commission concluded that the better course would be to consider the numerous technical issues raised by the lack of interoperability through a rulemaking proceeding, which the Commission undertakes in this NPRM.

III. Discussion

A. Challenges To Achieving Interoperability

17. The Commission historically has been interested in promoting interoperability. Beginning with the licensing of cellular spectrum, the Commission has opined that consumer equipment should be capable of operating over the entire range of cellular spectrum as a means to ''insure full coverage in all markets and compatibility on a nationwide basis.'' Although the Commission did not adopt a rule to require band-wide interoperability for PCS, it again stressed the importance of interoperability by acknowledging industry efforts to establish voluntary interoperability standards and asserted that ''[t]he availability of interoperability standards will deliver important benefits to consumers and help achieve the Commission's objectives of universality, competitive delivery of PCS, that includes the ability of consumers to switch between PCS systems at low cost, and competitive markets for PCS equipment.'' The Commission also stated that if PCS technology did not develop in a manner to accommodate roaming and interoperability, it might consider ''what actions the Commission may take to facilitate the more rapid development of appropriate standards.''

18. *Availability of End-User Equipment.* According to the Petitioners, a lack of interoperability in the Lower 700 MHz band has cut off meaningful access for many Lower A Block licensees to cutting-edge devices, and even those that do have access are able to acquire only a fraction of what other 700 MHz licensees are able to procure. Petitioners and proponents of a near-term interoperability requirement make essentially two arguments. Specifically, Vulcan argues that equipment vendors currently first serve the needs of ''the unique band class that is dominated by AT&T'' and that this slows the time to market for Lower A Block licensees because they experience a lack of access to new devices and face delays in the development of standards, chipsets, and equipment. Similarly, RTG asserts that equipment manufacturers have little incentive to innovate and provide compatible devices for smaller markets, particularly when providing interoperable devices would run contrary to their largest customers' desires.

19. Petitioners and other proponents also claim that an interoperability requirement should enable Lower A Block licensees and other Lower 700 MHz licensees to benefit from economies of scale with respect to mobile devices, which in turn would promote greater affordability that can be passed along to consumers. RCA argues that even where Band Class 12 equipment can be made available, the costs are unnecessarily inflated by the limited scale resulting from the lack of interoperability across the 700 MHz spectrum. According to the record, Cellular South was able to find a manufacturer willing to supply it with devices that included, at a minimum, Band Class 12 frequencies, but ''the cost of obtaining such devices without the economies of scale available based upon demand for similar devices by a nationwide carrier made pursuing the opportunity not economically feasible.'' Cellular South asserts that the necessary ''scale'' to obtain pricing that would allow it to bring devices to market would be expected to involve more than one million devices and in any case no less than a half million devices.

20. Nationwide providers AT&T and Verizon Wireless respond that Lower 700 MHz A Block licensees are free to negotiate with device manufacturers. Verizon Wireless claims that ''those decisions have to be made by those carriers to meet their own individual business plans. Verizon Wireless has nothing to do with those decisions.'' Verizon Wireless also asserts that there are at least 33 companies that manufacture devices for the U.S. market and that Petitioners ''provide no evidence about their efforts (or the apparent lack thereof) to obtain the devices they want, either individually or through a consortium, from any of these potential suppliers.''

21. The Commission seeks comment on Petitioners' and other proponents' argument that an interoperability requirement in the 700 MHz band is necessary to obtain affordable, advanced mobile devices to deploy service to consumers in smaller, regional, and rural service areas. To what extent have any Lower A Block licensees successfully negotiated with equipment vendors to date? What efforts have other Lower A Block licensees undertaken to negotiate with equipment vendors? Would an interoperability requirement help enable Lower A Block licensees to benefit from economies of scale with respect to mobile devices, and what would be the benefits to consumers? Do manufacturers require a provider to purchase a minimum number of devices? If so, what is that number and is it prohibitive for a smaller provider to achieve such a scale? The Commission seeks data and evidence in support of all of these claims.

22. *Effect on the Deployment of Advanced Broadband Services.* The record to date suggests that, unless mobile user equipment is capable of operating on all paired commercial Lower 700 MHz spectrum, the deployment of facilities-based mobile broadband networks could be hampered, particularly in rural and unserved areas. The Commission notes that a significant number of Lower A Block licenses are held by smaller, rural, and regional licensees. Petitioners and proponents argue that requiring all Lower 700 MHz licensees to use interoperable equipment would increase the likelihood that these Lower A Block licensees can obtain the necessary financing to deploy networks and devices. They add that the inability of small and regional providers to obtain interoperable devices impedes their ability to compete in the provision of 4G services, makes it difficult to maintain current customers and acquire new ones, results in equipment costs that are higher than for other bands, and creates uncertainty for spectrum holders that could have adverse effects on investment in deployment of networks and devices. RCA and Triad argue that Lower A Block licensees' inability to obtain affordable end user devices could cause the A Block spectrum to remain fallow for an extended period of time.

23. AT&T responds that an interoperability requirement in the Lower 700 MHz spectrum would impose unreasonable burdens on

AT&T's ability to build out its Lower 700 MHz spectrum. Specifically, AT&T claims that such a requirement would create ''substantial disruption and delay to [its] current LTE deployment plans and significant additional costs.'' AT&T claims that if it were required to abandon plans to use Band Class 17 and deploy a network around Band Class 12, it would need to upgrade its LTE base stations and develop and obtain ''new chipsets, devices and radio equipment, a process that usually takes years to complete.'' It also asserts that adding Band Class 12 capabilities into its mobile devices along with Band Class 17 capabilities would make the devices substantially larger, likely shorten battery life, and potentially require the tradeoff of other uses, such as bands used for international roaming. In addition, as discussed below, AT&T's objections also stem from issues associated with potential interference concerns from Channel 51 operations and high power Lower E Block broadcasts.

24. The Commission asks commenters to submit additional detailed metrics to evaluate the effects of an interoperability requirement on competition. Specifically, would the use of interoperable equipment promote consumer choice by facilitating the portability of mobile devices between service providers, thereby allowing consumers to switch more easily between providers? At the same time, would deployment of Lower 700 MHz B and C Block service be delayed by a move towards interoperability, either by rule or industry agreement? What would be the relevant costs associated with possible Commission action? What costs would Lower 700 MHz B and C licensees who have already committed to Band Class 17, or who plan to do so, incur if the Commission adopts an interoperability rule in the Lower 700 MHz spectrum?

25. Would a requirement that mobile user equipment be capable of operating on all paired commercial Lower 700 MHz spectrum facilitate deployment of facilities-based mobile broadband networks in rural and unserved areas? Are Lower A Block licensees just as likely to obtain funding and obtain affordable mobile equipment without Commission action? The Commission also seeks specific data and anecdotal evidence to support claims that an interoperability obligation would require complete redesign and upgrade of devices and base stations. The Commission seeks additional information on the necessary changes to chipsets and the timeframes these changes will impose.

26. U.S. Cellular recently announced the planned launch of a 4G LTE network that will cover 25 percent of U.S. Cellular's customers and will use the 700 MHz licenses of its partner, King Street Wireless. C-Spire, in contrast, reportedly has delayed its previously announced launch of its 4G LTE network. The Commission asks Lower A Block licensees to provide detailed information on the effect that a lack of interoperability has had, if any, on their efforts to deploy service. Commenters should be as specific as possible and should, where possible, include data or affidavits.

27. *Roaming.* A number of commenters argue that an interoperability requirement would promote roaming among 700 MHz licensees. These proponents argue that requiring the use of interoperable equipment in the Lower 700 MHz band would promote the commercial availability of mobile device equipment for all Lower 700 MHz licensees. Without that equipment, Lower 700 MHz A Block licensees maintain they cannot build out their networks, which they claim is a prerequisite for the negotiation of roaming agreements. Petitioners also claim that they have no reason to expect such mobile devices to be available on a widespread, affordable basis in the 700 MHz band and without such devices, there is nothing to negotiate. Petitioners contend that small rural and regional carriers are in no position to place bulk orders for mobile devices that work in the Lower 700 MHz A Block and also work in other 700 MHz frequency blocks. They claim that AT&T and Verizon Wireless are the only ones who hold the market power with the device manufacturers and the two carriers currently are developing mobile devices that work exclusively on their bands. Without interoperable devices, Petitioners state that there will be no roaming in the 700 MHz band.

28. NTCA states that mobile customers rely on and expect a ''seamless experience'' that is made possible by roaming arrangements. Without roaming, NTCA explains that customers will experience ''isolated islands of service.'' Further, Petitioners and other supporters assert that even if Band Class 12 equipment were available, from a technical perspective, Band Class 17 device users would be unable to roam on Band Class 12 networks operating on Block A. They argue that a lack of interoperability leaves customers of small carriers ''without an option for a nationwide service, perpetually unable to roam on the networks of the large carriers.''

29. AT&T and Verizon Wireless respond that the Lower A Block licensees are not prevented from negotiating roaming arrangements with providers offering services on the other 700 MHz blocks. AT&T also responds that A Block licensees are free to negotiate with handset manufacturers to design, manufacture and deploy wireless handsets and other devices that operate within the spectrum bands that are needed based upon their spectrum holdings and business plans, including Band Class 12 or other commercial spectrum.'' AT&T argues that ''[t]he Commission should not take action to force carriers to utilize a certain spectrum band for roaming,'' but that carriers should be able ''to choose their roaming partners based on factors like network compatibility, price, coverage, and call quality.'' The Commission seeks comment on whether interoperability would promote reasonable roaming arrangements among 700 MHz providers and would increase the number of providers that are technologically compatible for roaming partnership.

B. Potential for Harmful Interference

30. Even if the record demonstrates that the existence of two distinct band classes in the Lower 700 MHz band is creating a device and network deployment problem, the Commission must ultimately resolve the central question as to whether a single band class would cause widespread harmful interference to Lower 700 MHz B and C Block licensees, who would otherwise use Band Class 17 devices rather than Band Class 12.

31. Interoperability issues are particularly relevant at this time, as licensees are in the process of deploying LTE in the Lower 700 MHz band. As of December 2011, AT&T has launched LTE service using its Lower 700 MHz B and C Block licenses in 15 markets. In addition, as noted above, U.S. Cellular recently announced the planned launch of an LTE network that will cover 25 percent of its customers and will use the 700 MHz licenses of its partner, King Street Wireless. As discussed earlier, there are two Lower 700 MHz band LTE standards for the Lower 700 MHz band, with 3GPP Band Class 17 spanning the B and C Blocks, and Band Class 12 spanning the A, B, and C Blocks. Some commenters have argued that this, in turn, fragments the device ecosystem for LTE devices that operate in the Lower 700 MHz band and prevents interoperability.

32. Commenters argue that there would be two primary interference concerns for providers operating in the

Lower 700 MHz B and C Blocks if these providers were to substitute Band Class 12 for Band Class 17 in newly-offered devices (as opposed to adding Band Class 12 capabilities into devices along with Band Class 17): (1) Reverse intermodulation interference from adjacent DTV Channel 51 operations; and (2) blocking interference from neighboring high-powered operations in the Lower 700 MHz E Block. The Commission focuses its technical analysis on these two primary issues. The Commission notes that some commenters also express concern regarding the need to deploy wider filters in order to migrate to Band Class 12. The Commission observes, however, that a transition from Band Class 17 to Band Class 12 does not necessitate a change to base station filtering. Operators deploying networks in the Lower 700 MHz B and C Blocks can continue to filter base station receivers as they would for Band Class 17, and thus interference from Channel 51 to B and C Block base stations is the same regardless of whether Band Class 12 devices or Band Class 17 devices are used. Commenters also raise other potential interference concerns, including interference from Band Class 12 devices into Channel 51 television receivers, and other interference issues that are specific to operations in the A Block. The Commission does not address those issues herein. The Commission focuses the scope of this proceeding to interference to Lower 700 MHz B and C Block operations that may result from the adoption of Band Class 12 devices by Lower 700 MHz B and C licensees, whether voluntarily or by regulatory mandate.

33. AT&T asserts that both reverse intermodulation and blocking interference are significant issues. It expects that managing and mitigating the interference from Channel 51 and any high power Lower E Block broadcasts to its network would account for the greatest expenses, and that its customers would not, on balance, benefit from AT&T migrating to Band Class 12. AT&T argues that if it were required to use Band Class 12 devices as opposed to Band Class 17 devices, its customers would be forced to use devices that would expose them to interference risks (from Channel 51 and the E Block) they otherwise would not face. Notwithstanding the foregoing, AT&T affirms that it does not object to supporting interoperability in the Lower 700 MHz band, assuming supply chain availability, if interference challenges from Channel 51 and the Lower 700 MHz E Block licensees are addressed to its satisfaction.

34. With regard to the Channel 51 interference concerns, Motorola's view in its original 3GPP proposal to create Band Class 17 was that reverse intermodulation interference could happen when Band Class 12 devices are close to high-powered Channel 51 transmission towers, which it believes could result in in-band interference because of the limited radio frequency (RF) filtering capability of Band Class 12 filters. According to Motorola's paper, ''the key issue'' in determining the possibility of such interference is ''the level of the DTV Channel 51 wideband signal that would be present at the UE antenna port based on a reasonable deployment scenario,'' but Motorola does not provide evidence showing the circumstances that could produce conditions suitable to create reverse intermodulation interference from Channel 51.

35. Proponents of an interoperability requirement argue that no reverse intermodulation interference would occur, and that if an operator does experience any such interference, solutions exist to mitigate Channel 51 interference concerns to Band Class 12 devices operating in the B and/or C Blocks. According to Cellular South and King Street Wireless, ''With [less than five megahertz] Tx bandwidth, any Channel 51–700 intermodulation products would not fall within the device receive blocks (no self-interference issue).'' They represent that this is because a strong signal from Channel 51 must mix with a full-power Lower 700 MHz B and C Block device transmission, but ''LTE base stations do not allow devices to transmit at full power with [greater than five megahertz] bandwidth due to a self-desense issue.'' Essentially, Cellular South and King Street Wireless argue that power amplifier linearity in a mobile device improves considerably when it is not transmitting at full power and that if the device transmitted bandwidth is less than five megahertz, then intermodulation products resulting from the combination of Channel 51 and Lower 700 MHz band C Block transmit frequencies would not cause intermodulation interference. Finally, they point out that if intermodulation interference is experienced, the wireless operator ''may deploy an LTE base station several hundred meters away from the Channel 51 station to control device transmit power and provide a stronger downlink desired signal.''

36. Vulcan performed lab and field tests to test the assertion that ''reverse intermodulation distortion caused by Channel 51 using a Band Class 12 device would create an interfering signal in the B Block receiver.'' Based on the results of lab tests, Vulcan concludes that a minimum signal level of 0 dBm from Channel 51 would be necessary to create an interference signal at the noise floor of the B Block receiver, and field measurements showed that Channel 51 transmissions were no stronger than -21 dBm. The report indicates that the strongest signal strength in the field measurements of DTV Channel 51 is typically much lower than necessary to generate noticeable reverse intermodulation interference. AT&T responds that the tests referenced by Vulcan do not represent real-world situations, because the tests occurred only within a two kilometer radius of the Channel 51 tower, whereas stronger signals from Channel 51 can occur at closer distances.

37. With regard to interference from Lower E Block operations, Motorola asserts that receiver blocking performance may be degraded when Band Class 12 devices are close to high-powered Lower E Block transmission towers, due to limited Band Class 12 device out-of-band blocking rejection. According to AT&T, Band Class 17, with an extra six megahertz of separation from the Lower E Block, was created to alleviate this concern, so that the device filter can provide sufficient attenuation of the E Block transmissions. It further asserts that Band Class 12 has sub-optimal filtering because of the lack of sufficient frequency separation between the Lower E Block and the starting frequencies of Band Class 12.

38. The Coalition for 4G asserts that network operators can eliminate potential interference from Lower E Block operations by deploying the A, B, or C Block base stations near the E Block transmitters. In support of its position that interference from Lower 700 MHz E Block transmitters is manageable for Band Class 12 devices operating in Lower 700 MHz B and C blocks, Vulcan's lab and field tests assess the severity of interference issues to Band Class 12 devices from high power 50 kW transmissions in the Lower 700 MHz E Block. The tests indicate that the Atlanta field measurements of the highest signal power ratios between the 50 kW Lower E Block and B Block are typically 15 to 30 dB lower than necessary to produce Lower B Block receiver blocking. The tests conclude that real-world tests found the anticipated interference circumstances are manageable and Band Class 17 is redundant. Vulcan also asserts that the test results confirm Band Class 12

devices performance would not be worse than Band Class 17 devices, and that Band Class 17 already has greater levels of internal interference from within the Lower B and C Blocks.

39. In response, AT&T disagrees generally with the effectiveness of these potential mitigation techniques, stating that (1) increasing the number of cell sites near E Block transmitters or Channel 51 towers would increase the cost of providing 4G service, which would eventually be passed on to consumers, and (2) given the limited number of available site locations, coordination alone is insufficient to solve Band Class 12 interference issues. AT&T also asserts that adequate coverage of a 50 kW mobile broadcast service in the market in which Vulcan conducted its testing would require at least thirteen Lower 700 MHz E Block transmitters, which would lead to higher signal levels compared to the four transmitters that were active when testing was conducted by Vulcan. It is unclear, however, how much higher the signal levels may be close to a Lower E Block transmitter that is surrounded by twelve additional E Block transmitters versus one that is surrounded by only three. Whereas more base stations will improve overall signal levels and coverage, basic engineering calculations would suggest that any increase to the signal levels close to each base station, where signals may be strong enough to cause in-band receiver blocking interference to neighboring bands, would be negligible.

40. The Commission seeks comment on these and any additional technical and operational factors that should be taken into consideration in any transition to an interoperable Lower 700 MHz band. The Commission asks interested parties to submit measurements and quantitative analyses regarding the magnitude and extent of the interference risk from adjacent Channel 51 and Lower Block E transmissions for Band Class 12 devices operating in the Lower B and C Blocks. How effective are existing mitigation measures, such as coordination between Lower 700 MHz and DTV Channel 51 licensees? Further, what innovative technical measures might be introduced in the near future, such as better performing RF duplexers and filters? What additional interoperability solutions exist or are being developed to address these interference concerns? The Commission also seeks comment on the performance of Band Class 12 devices compared to Band Class 17 devices, as well as on other factors relating to the operations in the Lower B and C Blocks. Furthermore, in the event unwanted harmful interference cannot be mitigated in some areas, the Commission seeks comment on whether the potential harm resulting from interference in those areas is outweighed by the public interest benefits that would result from interoperability in the Lower 700 MHz band, and what factors should be considered in balancing these concerns.

41. As noted above, should Band Class 12 be substituted in devices for Band Class 17, operational issues may arise to the extent that a single network must be capable of supporting more than one device band class. That is, if a licensee chooses to continue supporting its existing grandfathered Band Class 17 devices, the wireless network will need to support both Band Class 17 devices and Band Class 12 devices. The Commission seeks comment on possible ways to address this issue. Since the two Band Classes overlap in frequencies, the Commission thinks it is likely that there are relatively simple, cost effective solutions that will allow a single network to accommodate devices from both band classes. For example, would the Equivalent Home Public Land Mobile Network file (EHPLMN) update in devices allow the LTE network to support both Band Class 12 and Band Class 17 devices?

42. The Commission seeks comment on whether there are measures it should take to address Lower 700 MHz interference concerns that may be preventing the voluntary adoption of Band Class 12 by Lower B and C Block licensees. The Commission notes that AT&T asks it to ''modify the rules governing service in Channel 51 and in the 700 MHz Lower E Block to permit power levels, out of band emissions and antenna heights that are no greater than those currently permitted in the 700 MHz Lower A and B blocks, to allow downlink only in the Lower E Block and uplink only in Channel 51, and to relocate any incumbent high power broadcast operations out of Channel 51 and the Lower E Block.'' In approving AT&T's acquisition of Qualcomm's Lower 700 MHz licenses (comprising all of the Lower 700 MHz D Block licenses and five of the Lower E Block licenses), the Commission included a condition that AT&T operate under the same power limits and height restrictions applicable to Lower 700 MHz A and B Block licensees, which will reduce the instances of high-powered operations in the Lower D and E Blocks. Specifically, the Commission stated that ''AT&T must operate on the Lower D and E Block licenses consistent with the limits set forth in Section 27.50(c), excluding Subsection 27.50(c)(7).'' The Commission also conditioned the transaction on AT&T's use of this spectrum only for downlink transmissions. In addition, it conditioned the transaction on AT&T taking certain steps to mitigate possible interference caused by AT&T's use of the Lower D and E Blocks to the uplink operations of licensees operating in the Lower 700 MHz A, B, and C Blocks, including mitigating interference within 30 days after receiving written notice from the A, B, or C Block licensee.[8]

43. The Commission seeks comment on whether it should modify its rules for Lower 700 MHz D and E Block operations, using the technical conditions set forth in the AT&T/Qualcomm decision as a template. Modifying the Commission's rules in this manner would lead to consistency in the technical requirements for the Lower D and E Blocks and would help to address potential harmful interference from operations on the Lower E Block licenses that are not held by AT&T. Would these modifications adequately address concerns that Lower B and C Block licensees may experience harmful interference from Lower D and E Block operations if they transition to Band Class 12? As a practical matter, would modifying the Commission's rules in this manner encourage Lower B and C Block licensees to voluntarily adopt interoperable devices? The Commission also seeks comment on how such modifications would affect the operations and plans of Lower E Block licensees, other than AT&T. What other modifications to the Lower 700 MHz D and E Block technical operational rules should the Commission consider and what are the costs and public interest benefits of these alternative rules?

[8] *AT&T/Qualcomm Order,* 26 FCC Rcd at 17617 para. 67. Specifically, the condition requires AT&T to ''(1) coordinate with the A, B, or C Block licensee to mitigate potential interference; (2) mitigate interference to A, B, or C Block operations within 30 days after receiving written notice from the A, B, or C Block licensee; and (3) ensure that D/E Block transmissions in areas where another licensee holds the A, B, or C Block license are filtered at least to the extent that D/E Block transmissions are filtered in markets where AT&T holds the A, B, or C Block license, as applicable.'' *Id.* U.S. Cellular urges the Commission to seek comment on and adopt a rule that imposes conditions on Lower E Block licensees consistent with the power limit restrictions, requirement for downlink-only transmissions, and interference mitigation requirements in the conditions adopted in the *AT&T/Qualcomm Order.* U.S. Cellular asserts that ''[i]mposition of such conditions will serve the public interest by helping to accelerate the further development of the Lower 700 MHz ecosystem.'' Letter from Grant B. Spellmeyer, Executive Director, Federal Affairs and Public Policy, U.S. Cellular, to Marlene H. Dortch, FCC, filed March 15, 2012, at 1.

44. With respect to potential interference as a result of Channel 51 operations, are there steps the Commission could take to reduce the threat of such potential interference that would balance the needs and rights of Channel 51 incumbents with Lower 700 MHz licensees? What role, if any, should the passage of the Middle Class Tax Relief and Job Creation Act of 2012, which gives the Commission authority to conduct incentive auctions, including in the television broadcast bands, have in the Commission's approach to potential interference from Channel 51 to the Lower 700 MHz band licensees? Could any measures be implemented without causing an undue burden on existing licensees? What is the likelihood that Channel 51 licensees will experience interference from operations in the Lower 700 MHz band? Vulcan asserts that ''Band Class 12 device interference into TV receivers is a claim that has never been substantiated,'' and that the potential for Channel 51 licensees to cause interference to A Block base stations ''is a deployment issue to be managed by the Lower A Block licensees.'' Aside from regulatory measures, what steps should the Commission take to encourage voluntary industry efforts to find solutions to interference concerns?

45. *Other Issues.* Commenters are concerned that if a provider adds Band Class 12 capabilities into mobile devices along with Band Class 17 (as opposed to substituting Band Class 12 for Band Class 17 in newly offered devices), the devices will be adversely affected with respect to form factor, cost, and battery life. The Commission seeks comment on these assertions. What network-specific issues would arise, and how could licensees address those issues? How difficult or costly would it be for licensees to address any network-specific issues? Are there interim as well as long-term solutions that might be employed, and what is their timing? Are there any roaming or legacy device support issues that one solution may address that another may not? Given the highly technical and complex nature of this proceeding, the Commission seeks qualitative and quantitative data and engineering analyses to support commenters' claims.

46. Finally, the Commission seeks comment on whether its efforts should be focused exclusively—as they are now—on interoperability in the Lower 700 MHz band, as opposed to the entire band. As the Commission noted above, although the Petition initially requests an interoperability requirement that requires mobile equipment to be capable of operating on all paired commercial frequency blocks in both the Upper and Lower 700 MHz bands, subsequent filings from some of the proponents of an interoperability requirement focus on requiring the use of Band Class 12 devices in the Lower 700 MHz band.[9] The Commission notes that there are unique interference environments and different technology-related issues, including the ability of equipment to accommodate multi-band interoperability, that are specific to the Lower versus Upper 700 MHz bands, as well as additional issues pertaining to consideration of requiring equipment to accommodate multi-band interoperability.[10]

C. Promoting Interoperability

47. Assuming the Commission concludes that concerns regarding harmful interference to Lower 700 MHz B and C Block licensees are not a reasonable obstacle to interoperability or can be mitigated through industry efforts and/or Commission action, the Commission seeks comment on whether there is likely to be a timely industry solution to interoperability in the Lower 700 MHz band, or whether additional regulatory measures will be necessary to promote interoperability across the Lower 700 MHz band. Commenters currently supporting Band Class 17 suggest that resolving interference concerns would encourage the use of Band Class 12. For example, Verizon asserts that it ''fully supports commercial development of Band Class 12 devices,'' and that ''actions addressing interference issues would spur evolution of the device market toward full Lower 700 MHz interoperability.'' AT&T asserts that, if interference challenges from high power broadcasts in Channel 51 and in the Lower 700 MHz E Block are addressed satisfactorily, it will not object to supporting interoperability in the Lower 700 MHz band. Further, AT&T contends that ''these challenges can and should be addressed.'' Absent a regulatory mandate to implement interoperability, will Lower 700 MHz licensees voluntarily ensure that all of the Lower 700 MHz spectrum used for mobile transmit is included in their mobile equipment?

48. In what timeframe would a voluntary migration to interoperable devices reasonably take place? The Commission notes that while U.S. Cellular recently announced that it has impending plans to launch 4G LTE service, together with its partner King Street Wireless L.P., it nevertheless asserts that ''the Commission must still act quickly to address issues related to interoperability within the lower 700 MHz bands.'' Similarly, proponents of an interoperability requirement argue that action must be taken by the end of 2012. Aside from the widespread and exclusive adoption of Band Class 12 in devices, which would necessitate only a single duplexer solution, what other solutions exist that might address interoperability concerns without regulatory intervention and within a reasonable timeframe? What would be a reasonable timeframe for a path to interoperability, and how will this timing affect consumers and competition?

49. The Commission thinks that an industry solution to the question of interoperability in the Lower 700 MHz band would be preferable because such a solution allows the market greater flexibility in responding to evolving consumer needs and dynamic and fast-paced technological developments. At the same time, the Commission recognizes that if the industry fails to move timely toward interoperability once interference concerns are adequately addressed (by regulatory action or otherwise), additional regulatory steps might be appropriate to further the public interest. The Commission staff will remain vigilant in monitoring the state of interoperability in the Lower 700 MHz band to ensure that the industry is making sufficient progress. What metrics and quantifiable data can the Commission use to measure whether the industry is making adequate progress towards achieving interoperability in the Lower 700 MHz band? In the event that such steps are warranted, the Commission seeks

[9] The Commission notes that certain recent ex parte filings urge it to consider interoperability across the entire 700 MHz band in light of the recent passage of the Spectrum Act, either now or in a future proceeding. *See, e.g.,* Letter from Harold Feld, Legal Director, Public Knowledge, to Marlene H. Dortch, FCC, filed March 13, 2012 at 2; Letter from Kathleen O'Brien Ham, Vice President, Federal Regulatory Affairs, T–Mobile USA, Inc., to Marlene H. Dortch, FCC, filed March 13, 2012 at 1, 4. The Commission's focus on the Lower 700 MHz band in this NPRM does not preclude the Commission from considering broader interoperability issues, including interoperability across the entire 700 MHz band, in the future.

[10] The recent technical study submitted by a consortium of several Lower 700 MHz A Block licensees focuses on interference issues associated with the use of Band Class 17 versus Band Class 12 in the Lower 700 MHz Band. *See* Letter from Mark W. Brennan, Hogan Lovells, Counsel to Vulcan, to Marlene H. Dortch, FCC, filed Nov. 25, 2011, Attachment, ''Study to Review Interference Claims that have Thwarted Interoperability in the Lower 700 MHz Band.'' The Commission notes that requiring interoperability in the Upper 700 MHz Band would introduce additional and unique interference scenarios, particularly technical issues related to implementing both Band Class 13 and Band Class 14 in a single device, as well as the use of such a device while also protecting GPS receivers and Public Safety Narrowband operations.

comment on whether it would be necessary to mandate interoperability in the Lower 700 MHz band or whether there are other, flexible regulatory measures that the Commission should consider.

50. In the event that interference concerns are reasonably addressed and the Commission is left with no other option to maximize innovation and investment in the Lower 700 MHz band besides mandating mobile device interoperability, one approach would be to require Lower 700 MHz A, B, or C Block licensees, with respect to their networks operating in this spectrum, to use only mobile user equipment that has the capability to operate across all of these blocks. For example, those licensees deploying LTE in the Lower 700 MHz band would no longer be allowed to offer mobile units operating on Band Class 17, which provides for operation on only the Lower 700 MHz B and C Blocks. Those licensees deploying LTE in the Lower 700 MHz band would substitute Band Class 17 with Band Class 12. The Commission notes that this approach focuses on mobile user device interoperability and would not require modifications to Lower 700 MHz B and C Block licensees' base stations beyond those necessary to support Band Class 12 devices operating on these licensees' authorized Lower 700 MHz frequencies only. In other words, the Commission is not contemplating requiring licensees to implement base station operations on frequencies they do not have the potential to use, in order to spur production of base station elements that can be used only by licensees operating on other frequencies. The Commission seeks comment on this approach and how, if adopted, it would promote key public interest objectives, including competition and consumer choice among mobile broadband service providers, the widespread deployment of 4G networks, particularly in rural and unserved areas, the availability of additional innovative 4G devices, and increased roaming opportunities. In order to facilitate a smooth transition to interoperable mobile equipment use in the Lower 700 MHz band, the Commission would propose a reasonable transition period of no longer than two years after the effective date of an interoperability requirement, thereby minimizing the possibility of stranded investments in existing equipment. Furthermore, the Commission would propose to grandfather the use of devices already in use by consumers as of the transition deadline, so that consumers using existing Band Class 17 equipment would not be adversely affected. The Commission seeks comment on this approach—as well as on any alternative approaches, including associated costs and benefits—that might equally satisfy the Commission's public interest objectives in promoting the widespread deployment of broadband service and increased competition and consumer choice in the mobile broadband marketplace.

51. The Commission notes that, in considering whether to adopt rules to promote the development of interoperable equipment in the Lower 700 MHz band, the Commission will consider a number of factors, including the costs or burdens that any such new obligation would impose on licensees or others, and whether the costs would be offset by benefits to consumers, including those that would result from innovation in the marketplace, increased investments in networks, or additional competition. The Commission therefore requests comment on the costs and the benefits of adopting rules that would promote interoperability. The Commission also seeks comment on the costs and benefits of an industry-based solution to interoperability in the Lower 700 MHz band. Are there cost savings to consider, or conversely, are there costs that Lower 700 MHz licensees would incur if the industry resolved the interoperability issue without a regulatory mandate?

52. Commenters should quantify the costs of implementing any proposed solutions to the interference issues discussed above. The Commission seeks comment on costs that Lower 700 MHz B and C licensees are likely to incur in order to comply with a device interoperability requirement, including quantification of the costs to develop and obtain new compatible chipsets or front ends; design and manufacture new mobile devices; and develop any hardware or software changes necessary to implement an interoperability requirement. How much will the costs and prices of devices change as a result of an interoperability requirement? The Commission seeks comment on the revenue implications an interoperability requirement would have for providers and device manufacturers. The Commission also seeks comment on quantifiable ways in which licensees may benefit from a sunset of devices capable of operating only on a subset of paired Lower 700 MHz frequencies. For example, will Lower 700 MHz licensees achieve economies of scale in devices? The Commission seeks quantification of these economies of scale. What cost savings might result from an interoperability rule? The Commission also seeks comment on the potential costs associated with interoperability if interference cannot be mitigated in some areas. In these areas, will the public interest benefits from interoperability outweigh the costs?

53. The Commission seeks data on consumer benefits that may result from interoperability, including greater affordability and availability of 4G equipment, increasing consumer choice in equipment, promoting the widespread deployment of broadband services, providing greater options in selecting a service provider, and facilitating greater roaming opportunities. How would a rule requiring interoperability affect innovation and investment, both in the near term and in the longer term? Would such a requirement foster additional competition, and how would any increase in competition be measured?

54. What are the particular benefits to consumers or others that would result from a device interoperability requirement that includes a reasonable transition period (*e.g.,* two years) and grandfathers the use of existing, non-interoperable devices after the transition deadline? The Commission seeks comment on the costs that licensees may incur in continuing to offer service for non-interoperable devices. How long will such devices need to be supported? Are there any classes of customers that will require longer-term support than others? Further, the Commission seeks comment on the extent to which the proposed transition period minimizes or alleviates any adverse economic impact to licensees and device manufacturers. Is there an optimal transition period that would reduce costs to the extent practicable while maximizing benefits?

55. In providing responses to these questions, the Commission asks commenters to take into account only those costs and benefits that directly result from the implementation of particular rules that could be adopted. Commenters should identify the various costs and benefits associated with a particular requirement. Further, to the extent possible, commenters should provide specific data and information, such as actual or estimated dollar figures for each specific cost or benefit addressed, including a description of how the data or information was calculated or obtained, and any supporting documentation or other evidentiary support.

56. *Legal authority.* Finally, the Commission seeks comment on its authority to mandate a device interoperability requirement should

interference concerns be reasonably addressed and there be no industry solution in place. The record is divided on this issue. On the one hand, Petitioners argue that the Commission should find the current contractual arrangements between wireless providers and equipment providers unlawful under Section 201(b), which prohibits unjust or unreasonable practices in connection with communications services, and Section 202(a), which prohibits unjust or unreasonable discrimination. Petitioners also claim that a device interoperability requirement would fall within the purview of Section 1 of the Communications Act, which directs the Commission to establish policies that promote the provision of communications service to all people of the United States, without discrimination. Petitioners argue that, at a minimum, ''Section 1 can be combined by the Commission with other 'express delegations of authority' to enable the Commission to exercise ancillary jurisdiction over issues that are reasonably related to the policies stated in Section 1.'' Commenters also reference additional sections of the Communications Act as support for Commission authority, including: Section 4(i), which specifies that the Commission ''may * * * make such rules and regulations * * * as may be necessary in the execution of its functions;'' Section 254(b)(3), which sets forth universal service principles; Section 303(g), to ''encourage the larger and more effective use of radio in the public interest;'' Section 303(r), which directs the Commission to prescribe such restrictions and conditions as necessary to carry out the provisions of the Act; Section 307(b), which directs the Commission to consider a ''fair, efficient and equitable'' distribution of radio services in applications for licenses, modifications, and renewals; and Section 706, which encourages the reasonable and timely deployment of advanced telecommunications capability to all Americans through ''measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.''

57. On the other hand, other commenters argue that Petitioners fail to cite a valid legal basis to adopt such an interoperability requirement. Both Verizon and AT&T argue that Sections 201 and 202 prohibit providers from unreasonable practices or discrimination among consumers. Verizon and AT&T also argue that the other provisions referenced by supporters of an interoperability requirement do not grant the Commission the authority to regulate equipment, or else are not substantive grants of authority for Commission action.

58. The Commission observes that, under Title III of the Communications Act, the Commission has broad and extensive authority to manage the use of spectrum.[11] This authority includes the power and obligation to condition the Commission's licensing actions on compliance with requirements that the Commission deems consistent with the public interest, convenience, and necessity,[12] including operational requirements, if the condition or obligations will further the goals of the Communications Act without contradicting any basic parameters of the agency's authority.[13] It also includes the powers to ''prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class,'' [14] to ''generally encourage the larger and more effective use of radio in the public interest,'' [15] and to modify licenses if, in the judgment of the Commission, such action will promote the public interest, convenience, and necessity.[16] Furthermore, the Communications Act provides the Commission with broad powers under such provisions as Section 302(a) to promulgate regulations designed to address radio frequency (RF) interference, including the regulation of devices that are capable of emitting RF energy,[17] and Section 303(e) and (f), which empower the Commission to regulate licensees and the equipment and apparatus they use.[18]

59. The Commission seeks comment on its statutory authority to adopt a device interoperability requirement. The Commission notes that it has previously required interoperability across licensed spectrum as a means to ''insure full coverage in all markets and compatibility on a nationwide basis.'' [19] In addition, by promoting the availability of subscriber handsets and network buildout of Lower 700 MHz A Block licenses an interoperability requirement of the type discussed here can facilitate the provision of roaming services, which is subject to Commission rules.[20] The Commission

[11] *See, e.g.,* 47 U.S.C. 301 (stating that ''[i]t is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license'').

[12] *See, e.g.,* 47 U.S.C. 301 (authorizing the Commission to issue licenses for use of radio spectrum); 47 U.S.C. 304 (stating that ''[n]o station license shall be granted by the Commission until the applicant therefore shall have waived any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise''); 47 U.S.C. 307(a) (stating that Commission shall grant licenses ''if public convenience, interest, or necessity will be served thereby, subject to the limitations of [the Communications Act]''); 47 U.S.C. 309(j)(3) (requiring the Commission to design and conduct competitive bidding systems for issuance of licenses to promote the purposes of section 1 of the Act and specified statutory objectives, including ''the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas'').

[13] *See, e.g.,* 47 U.S.C. 303(r) (stating that if ''the public convenience, interest, or necessity requires [, the Commission] shall * * * prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act''); *Schurz Communications, Inc.* v. *FCC,* 982 F.2d 1043 (7th Cir. 1992) (Communications Act invests Commission with ''enormous discretion'' in promulgating licensee obligations that the agency determines will serve the public interest).

[14] 47 U.S.C. 303(b).

[15] 47 U.S.C. 303(g). *See also* 47 U.S.C. 151 (creating the Commission for the purpose of regulating communications in order to make available to all people of the United States a rapid, efficient, nationwide and world-wide communication service with adequate facilities at reasonable prices).

[16] *See* 47 U.S.C. 316(a)(1) (stating that ''[a]ny station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity''); *see also Committee for Effective Cellular Rules* v. *FCC,* 53 F.3d 1309 (DC Cir. 1995).

[17] *See, e.g.,* 47 U.S.C. 302a(a) (providing Commission with authority, consistent with the public interest, convenience and necessity, to make reasonable regulations ''governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications'').

[18] *See, e.g.,* 47 U.S.C. 303(e) (providing Commission with authority to ''[r]egulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein'') and 47 U.S.C. 303(f) (providing Commission with authority to ''[m]ake such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act'').

[19] Inquiry Into the Use of the Bands 825–845 MHz and 870–890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, CC Docket No. 79–318, *Report and Order,* 86 FCC 2d 469, 482 (1981).

[20] *See* 47 U.S.C. 303(r). The Commission has imposed voice roaming requirements for interconnected CMRS providers under, *inter alia,* its Title II authority, and requirements to promote the availability of data roaming arrangements under, *inter alia,* its Title III authority. *See, e.g.,* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05–265, *Order on Reconsideration and*

Continued

seeks comment on its analysis of these Title III statutory provisions as a basis for its authority to take the actions proposed herein.

IV. Conclusion

60. In this *Notice of Proposed Rulemaking,* the Commission is focused primarily on resolving a long-running dispute over the threat of interference to Lower 700 MHz B and C Block licensees either by agreement on the part of these licensees to be interoperable with the Lower 700 MHz A Block licensees, or by a regulatory mandate for such interoperability. Should the Commission find that interference concerns are truly minimal or can be reasonably mitigated, then the Commission, along with industry, must determine the next best steps to ensure interoperability. The Commission's aim is to explore various options through this proceeding that help achieve the ultimate goal of interoperability.

V. Procedural Matters

Initial Regulatory Flexibility Analysis

61. As required by the Regulatory Flexibility Act of 1980, as amended (the RFA),[21] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact of the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM) on a substantial number of small entities. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the NPRM provided in the item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[22] In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[23]

A. Need for, and Objectives of, the Proposed Rules

62. Certain Lower 700 MHz A Block licensees have asserted that the development of two distinct band classes within the Lower 700 MHz band has hampered their ability to have meaningful access to a wide range of advanced devices. The Commission initiates this rulemaking proceeding to promote interoperability in the Lower 700 MHz band. The Commission states that the Communications Act directs it to, among other things, promote the widest possible deployment of communications services, ensure the most efficient use of spectrum, and protect and promote vibrant competition in the marketplace. In this NPRM, the Commission's objective is to evaluate whether the customers of Lower 700 MHz B and C Block licensees would experience harmful interference, and if so to what degree, if the Lower 700 MHz were interoperable. Assuming that interoperability would cause limited or no harmful interference to Lower 700 MHz B and C Block licensees or that such interference can reasonably be mitigated through industry efforts and/or through modifications to the Commission's technical rules or other regulatory measures, the Commission asks whether there is likely to be a timely industry solution to interoperability in the Lower 700 MHz band, or whether additional regulatory measures will be necessary to promote interoperability across the Lower 700 MHz band, such as requiring Lower 700 MHz A, B, or C Block licensees, with respect to their networks operating in this spectrum, to use only mobile user equipment that has the capability to operate across all of these paired commercial 700 MHz blocks.

63. The Commission considers whether a requirement that mobile user equipment be capable of operating on all paired commercial Lower 700 MHz spectrum could foster deployment of facilities-based mobile broadband networks, particularly in rural and unserved areas. The Commission also considers whether such a requirement would increase the likelihood that the Lower A Block licensees can obtain the necessary financing to deploy networks and devices, particularly in smaller and regional areas. The Commission considers the extent to which Lower A Block licensees have successfully negotiated with equipment vendors, whether an interoperability requirement will enable the A Block licensees to benefit from economies of scale with respect to mobile devices and whether manufacturers require a provider to purchase a minimum number of devices. The Commission considers whether interoperability would promote reasonable roaming arrangements among 700 MHz providers and would increase the number of providers that are technologically compatible for roaming partnership.

64. With respect to the technical issues, the Commission states that it must ultimately resolve the central question as to whether a single band class would cause widespread harmful interference to Lower 700 MHz B and C Block licensees, who would otherwise use Band Class 17 devices rather than Band Class 12. The Commission's goal is to determine the extent of two primary interference concerns for providers operating in the Lower 700 MHz B and C Blocks if these providers substitute Band Class 12 for Band Class 17 in newly-offered devices: (1) Reverse intermodulation interference from adjacent DTV Channel 51 operations; and (2) blocking interference from neighboring high-powered operations in the Lower 700 MHz E Block. The Commission considers and seeks comment on the extent of the interference risk from adjacent Channel 51 and Lower Block E transmissions for Band Class 12 devices operating in the Lower B and C Blocks, the effectiveness of existing mitigation measures, and the extent of any innovative technical measures in the near future, or that can be developed. The Commission also considers how licensees can continue to support its existing grandfathered Band Class 17 devices and Band Class 12 devices.

65. Through the NPRM, the Commission's objective is to develop a record to determine whether there are measures it should take to address Lower 700 MHz interference concerns that may be preventing a voluntary adoption of Band Class 12 by Lower B and C Block licensees. For instance, the Commission seeks comment on whether to modify its technical rules for Lower 700 MHz D and E Block operations. In addition, the Commission considers steps to take to reduce the threat of potential interference to balance the needs and rights of Channel 51 incumbents with Lower 700 MHz licensees.

66. The Commission thinks that an industry solution to the question of interoperability in the Lower 700 MHz band would be preferable to a regulatory approach because such a solution allows the market greater flexibility in responding to evolving consumer needs and dynamic and fast-paced technological developments. The Commission considers what would be a reasonable timeframe for a voluntary migration to interoperability and how such timing may affect consumers and competition.

Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181, 4184 para. 5 (2010) (based on Commission's Title II authority); Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05–265, *Second Report and Order,* 26 FCC Rcd 5411, 5439–46 paras. 61–68 (2011) (based on Commission's Title III authority).

[21] 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).

[22] *See* 5 U.S.C. 603(a).

[23] *Id.*

67. However, the Commission recognizes that if the industry fails to move timely toward interoperability once interference concerns are adequately addressed, by regulation or otherwise, additional regulatory steps might be appropriate to further the public interest. If interference concerns are reasonable addressed and the Commission is left with no other option to maximize innovation and investment in the Lower 700 MHz band besides mandating mobile device interoperability, one approach to achieve the Commission's goals would be to require Lower 700 MHz A, B, or C Block licensees, with respect to their networks operating in this spectrum, to use only mobile user equipment that has the capability to operate across all of these blocks. For example, the Commission considers whether to prohibit those licensees deploying LTE in the Lower 700 MHz band from offering mobile units that operate on Band Class 17, which provides for operation on only the Lower 700 MHz B and C Blocks. In order to facilitate the goal of a smooth transition to interoperable mobile equipment use in the Lower 700 MHz band, the Commission would propose a transition period of no longer than two years after the effective date of an interoperability requirement. The Commission also would propose to grandfather the use of devices already in use by consumers as of the transition deadline, so that consumers using existing Band Class 17 equipment would not be adversely affected.

B. Legal Basis

68. The authority for the actions taken in this Notice is contained in Sections 1, 2, 4(i), 4(j), 301, 302(a), 303(b), 303(e), 303(f), 303(g), 303(r), 304, 307(a), 309(j)(3), and 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a(a), 303(b), 303(e), 303(f), 303(g), 303(r), 304, 307(a), 309(j)(3), and 316(a)(1), and Sections 1.401 *et seq.* of the Commission's rules. 47 CFR 1.401 *et seq.*

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

69. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [24] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[25] 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).[26]

70. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by an interoperability rule. Implementing a mobile user equipment interoperability requirement in the Lower 700 MHz band affects 700 MHz spectrum licensees.

71. This IRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this IRFA provides information that describes auction results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

72. *Wireless Telecommunications* Carrier (*except satellite*). The appropriate size standard under SBA Rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees.[27] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by its proposed action.[28]

73. *Upper 700 MHz Band Licensees.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses.[29] On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block.[30] The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

74. *Lower 700 MHz Band Licensees.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[31] The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[32] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[33]

[24] 5 U.S.C. 601(6).

[25] 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.**''

[26] 15 U.S.C. 632.

[27] 13 CFR 121.201, NAICS code 517110.

[28] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[29] Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06–150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, § 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone, WT Docket No. 01–309, Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket No. 03–264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06–169, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06–229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96–86, Declaratory Ruling on Reporting Requirement Under Commission's Part 1 Anti-Collusion Rule, WT Docket No. 07–166, *Second Report and Order,* 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

[30] *See* Auction of 700 MHz Band Licenses Closes, *Public Notice,* 23 FCC Rcd 4572 (WTB 2008).

[31] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022 (2002).

[32] *See id.,* 17 FCC Rcd at 1087–88 para. 172.

[33] *See id.*

Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[34] The SBA approved these small size standards.[35] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) was conducted in 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won licenses.[36] A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses.[37] Seventeen winning bidders claimed small or very small business status, and nine winning bidders claimed entrepreneur status.[38] In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band. All three winning bidders claimed small business status.

75. In 2007, the Commission reexamined its rules governing the 700 MHz band in the 700 MHz Second Report and Order.[39] An auction of A, B and E Block 700 MHz licenses was held in 2008.[40] Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

76. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' [41] The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. According to Census Bureau data for 2007, there were a total of 919 firms in this category that operated for the entire year. Of this total, 771 had less than 100 employees and 148 had more than 100 employees.[42] Thus, under that size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

77. This NPRM proposes no new reporting or recording keeping requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

78. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[43]

79. As an alternative to a regulatory approach, the Commission considers the impact of a timely voluntary industry solution to interoperability in the Lower 700 MHz band. The Commission considers how this alternative approach may affect consumers and competition. The Commission seeks comment on the economic impact of this approach on licensees, including small entities. In addition, the Commission seeks comment on other alternative approaches to interoperability in the Lower 700 MHz band that would reduce or eliminate economic adversity on licensees, including small entities.

80. Whether the Commission implements an interoperability requirement, or an industry solution, it seeks comment on the relevant costs and benefits on small entities. The Commission considers the potential benefits to consumers, innovation, and investment. In addition, it considers the revenue implications, cost savings, or adverse economic impact of an interoperability rule or an industry-based solution for Lower 700 MHz providers and device manufacturers.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

81. None.

VI. Other Procedural Matters

A. Ex Parte Rules

82. The proceeding initiated by this Notice of Proposed Rulemaking shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a

[34] *See id.,* 17 FCC Rcd at 1088 para. 173.

[35] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Aug. 10, 1999).

[36] *See* Lower 700 MHz Band Auction Closes, *Public Notice,* 17 FCC Rcd 17272 (2002).

[37] *See* Lower 700 MHz Band Auction Closes, *Public Notice,* 18 FCC Rcd 11873 (2003).

[38] *See id.*

[39] *700 MHz Second Report and Order,* 22 FCC Rcd at 15359 n.434.

[40] *See* Auction of 700 MHz Band Licenses Closes, *Public Notice,* 23 FCC Rcd 4572 (2008).

[41] The NAICS Code for this service is 334220. *See* 13 CFR 121.201. *See also http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-_lang=en.*

[42] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=4500&-ds_name=EC0731SG3&-_lang=en.*

[43] *See* 5 U.S.C. 603(c).

method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Filing Requirements

83. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (''ECFS''), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

84. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

85. To request information in accessible formats (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

86. For additional information on this proceeding, contact Brenda Boykin of the Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418–2062.

C. Initial Regulatory Flexibility Act Analysis

87. As required by the Regulatory Flexibility Act of 1980 (''RFA''), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this NPRM. The IRFA is attached to this NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this Notice of Proposed Rulemaking as set forth on the first page of this document and have a separate and distinct heading designating them as responses to the IRFA.

D. Paperwork Reduction Act

88. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

VII. Ordering Clauses

89. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 4(j), 301, 302(a), 303(b), 303(e), 303(f), 303(g), 303(r), 304, 307(a), 309(j)(3), and 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302(a), 303(b), 303(e), 303(f), 303(g), 303(r), 304, 307(a), 309(j)(3), and 316(a)(1), and § 1.401 *et seq.* of the Commission's rules, 47 CFR 1.401 *et seq.,* that this Notice in WT Docket No. 12–69 IS *adopted.*

90. *It is further ordered* that the Petition for Rulemaking of the 700 MHz Block A Good Faith Purchaser Alliance *is granted* to the extent described herein.

91. *It is further ordered* that the proceeding in RM–11592 is hereby terminated.

92. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

[FR Doc. 2012–7760 Filed 3–30–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 395

[Docket No. FMCSA–2010–0167]

RIN 2126–AB20

Electronic On-Board Recorders and Hours of Service Supporting Documents

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public listening session.

SUMMARY: FMCSA announces that it will hold a public listening session to solicit information, concepts, ideas, and comments on Electronic On-Board Recorders (EOBRs) and the issue of driver harassment. Specifically, the Agency wants to know what factors, issues, and data it should consider as it addresses the distinction between productivity and harassment: What will prevent harassment from occurring; what types of harassment already exist; how frequently and to what extent harassment happens; and how an electronic device such as an EOBR, capable of contemporaneous transmission of information to a motor carrier, will guard against (or fail to guard against) harassment. Additionally, the Agency will solicit concepts, ideas, and comments from enforcement personnel on the hours-of-service (HOS) information they would need to see on the EOBR display screen to effectively enforce the HOS rules at the roadside and the type of evidence they would need to retain in order to support issuing drivers citations for HOS

violations observed during roadside inspections. This session will be held in Bellevue, Washington (WA), and will allow interested persons to present comments, views, and relevant new research that FMCSA should consider in development of Supplemental Notice of Proposed Rulemaking (SNPRM). This listening session will be recorded and a transcript of the session will be placed in the docket for FMCSA's consideration. The listening session will also be webcast via the Internet and will allow for email interactivity during the webcast.

DATES: The listening session will be held on Thursday, April 26, 2012, at the Commercial Vehicle Safety Alliance (CVSA) meeting in Bellevue, WA. The listening session will run from 1:30 p.m.–5:30 p.m., with a break between 3:30 p.m. and 4 p.m., and continue from 4 p.m.–5:30 p.m. local time, or earlier, if all participants wishing to express their views have done so.

ADDRESSES: The listening session will be held at the Hyatt Regency Bellevue, 900 Bellevue Way NE., Bellevue, WA 98004, telephone: (425) 462–1234 and fax: (425) 646–7567. The session will be held in the Grand Ballroom IJK on the 2nd floor.

Internet Address for Live Webcast. FMCSA will post specific information on how to participate via the Internet on the FMCSA Web site at: *http://www.fmcsa.dot.gov* in advance of the listening session.

You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2010–0167 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: For information concerning the listening session or the live Webcast, please contact Ms. Shannon L. Watson, Senior Advisor for Policy, FMCSA, (202) 385–2395, *Shannon.Watson@dot.gov.*

Should you need sign language interpretation or other assistance to participate in this listening session, please contact Ms. Watson by Thursday, April 12, 2012, to allow us to arrange for such services. There is no guarantee that services requested on short notice can be provided.

SUPPLEMENTARY INFORMATION:

I. Background

On February 13, 2012, FMCSA published a notice of intent in the **Federal Register** announcing the Agency's plan for the Electronic On-Board Recorders and Hours of Service Supporting Documents rulemaking (EOBR 2) by working towards preparing a Supplemental Notice of Proposed Rulemaking (SNPRM) (77 FR 7562). In this notice, FMCSA stated it would do the following: (1) Hold listening sessions on the issue of driver harassment; (2) task the Motor Carrier Safety Advisory Committee (MCSAC) to assist in developing material to support this rulemaking, including technical specifications for EOBRs and their potential to be used to harass drivers; and (3) conduct research by surveying drivers, carriers, and vendors regarding harassment issues.

The following discussion summarizes the recent regulatory history of the agency's EOBR program:

EOBR 1

On April 5, 2010, the Agency issued a final rule (EOBR 1) (75 FR 17208) that provided new technical requirements for EOBRs. The EOBR 1 final rule also required the limited, remedial use of EOBRs for motor carriers with significant HOS violations. The EOBR 1 final rule required a motor carrier found to have a 10 percent violation rate for any HOS regulation listed in Appendix C of 49 CFR part 385 during a single compliance review to install and use EOBRs on all of its CMVs for a period of 2 years. The compliance date for the rule was June 4, 2012.

The Owner-Operator Independent Drivers Association (OOIDA) challenged the final rule in the United States Court of Appeals for the Seventh Circuit. OOIDA raised several concerns relating to EOBRs and their potential use for driver harassment. On August 26, 2011, the Court vacated the entire final rule. *Owner-Operator Indep. Drivers Ass'n et al.* v. *Fed. Motor Carrier Safety Admin.,* 656 F.3d. 580 (7th Cir. 2011). The Court held that, contrary to statutory requirements, the Agency failed to address the issue of driver harassment, including how EOBRs could potentially be used to harass drivers and ways to ensure that EOBRs were not used to harass drivers. The basis for the decision was FMCSA's failure to directly address a requirement in 49 U.S.C. 31137(a), which reads as follows:

> USE OF MONITORING DEVICES. If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.

The court's expectation about how the Agency should address harassment and productivity under the statutory directive included the following:

> In addition, an adequate explanation that addresses the distinction between productivity and harassment must also describe what precisely it is that will prevent harassment from occurring. The Agency needs to consider what types of harassment already exist, how frequently and to what extent harassment happens, and how an electronic device capable of contemporaneous transmission of information to a motor carrier will guard against (or fail to guard against) harassment. A study of these problems with EOBRs already in use, and a comparison with carriers that do not use these devices, might

be one obvious way to measure any effect that requiring EOBRs might have on driver harassment (*Id.* at 588–89).

As a result of the vacatur, carriers relying on electronic devices to monitor HOS compliance are currently governed by the Agency's previous rules regarding the use of automatic on-board recording devices (49 CFR 395.15). The requirements set forth in 49 CFR 395.15 were not affected by the Seventh Circuit's decision regarding the technical specifications set out in 49 CFR 395.16 in the EOBR 1 Final Rule.

II. Meeting Participation and Information FMCSA Seeks From the Public

The listening session is open to the public. Speakers' remarks will be limited to five minutes each. The public may submit material to the FMCSA staff at the session for inclusion in the public docket, FMCSA–2010–0167. FMCSA will docket the transcription of the listening session that will be prepared by an official court reporter.

FMCSA tasked the MCSAC with addressing harassment through Task 12–01, titled, ''Measures to Ensure Electronic On-Board Recorders (EOBRs) Are Not Used to Harass Commercial Motor Vehicle (CMV) Operators''. MCSAC held public meetings on this task on February 7–8, 2012, and based on its deliberations, submitted a report to the FMCSA Administrator on February 8, 2012. This report is available for review at *http://mcsac.fmcsa.dot.gov/meeting.htm* and in the public docket, FMCSA–2010–0167. The questions posed to MCSAC will be used as a template for public comment and discussion at the listening session.

The comments sought from the questions below may be submitted in written form at the session and summarized verbally, if desired:

1. In terms of motor carriers' and enforcement officials' monitoring or review of drivers' records of duty status (RODS), what would constitute driver harassment? Would that definition change based on whether the system for recording HOS is paper or electronically based? If so, how? As a starting point, the Agency is interested in potential forms of harassment, including but not limited to those that are: (1) Not prohibited already by current statutes and regulations; (2) distinct from monitoring for legitimate business purposes (e.g., efforts to maintain or improve productivity); and (3) facilitated or made possible solely by EOBR devices and not as a result of functions or features that motor carriers may choose to purchase, such as fleet management system capabilities. Is this interpretation appropriate? Should it be broader? Or narrower?

2. Are there types of driver harassment to which drivers are uniquely vulnerable if they are using EOBRs rather than paper logs? If so, what and how would use of an EOBR rather than a paper log make a driver more susceptible to harassment? Are there ways in which the use of an EOBR rather than a paper log makes a driver less susceptible to harassment?

3. What types of harassment are motor carrier drivers subjected to currently, how frequently, and to what extent does this harassment happen? How would an electronic device capable of contemporaneous transmission of information to a motor carrier guard against (or fail to guard against) this kind of harassment? What experience have motor carriers and drivers had with carriers using EOBRs as compared to those who do not use these devices in terms of their effect on driver harassment or complaints of driver harassment?

4. What measures should the Agency consider taking to eliminate the potential for EOBRs to be used to harass drivers? Are there specific functions and capabilities of EOBRs that should be restricted to reduce the likelihood of the devices being used to harass vehicle operators?

5. Motor carriers are often responsible for managing their drivers and equipment to optimize efficiency and productivity and to ensure transportation services are provided in accordance with a planned schedule. Carriers commonly use electronic devices, which may include but are not limited to EOBRs, to enhance productivity and optimize fleet operation. Provided such devices are not used to coerce drivers into violating Federal safety regulations, where is the line between legitimate productivity measures and inappropriate oversight or actions that may be construed as harassment?

FMCSA also seeks concepts, ideas, and comments from enforcement personnel on the HOS information they would need to see on the EOBR display screen at the roadside to effectively enforce the HOS rules and the type of evidence they would need to retain in order to support issuing drivers a citation for HOS violations observed during roadside inspections.

III. Alternative Media Broadcasts During and Immediately After the Listening Session on April 26, 2012

FMCSA will webcast the listening session on the Internet. Specific information on how to participate via the Internet and the telephone access number will be on the FMCSA Web site at *http://www.fmcsa.dot.gov.* FMCSA will docket the transcripts of the webcast and a separate transcription of the listening session that will be prepared by an official court reporter.

Issued on: March 26, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–7899 Filed 3–30–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1002, 1011, 1108, 1109, 1111, and 1115

[Docket No. EP 699]

Assessment of Mediation and Arbitration Procedures

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board or STB) proposes regulations that would require parties to participate in mediation in certain types of cases and would modify its existing regulations that permit parties to engage voluntarily in mediation. The Board also proposes an arbitration program under which carriers and shippers would agree voluntarily to arbitrate certain types of disputes that come before the Board, and proposes modifications to clarify and simplify its existing rules governing the use of arbitration in other disputes. The Board seeks comments regarding these proposed rules.

DATES: Comments are due by May 17, 2012. Replies are due June 18, 2012.

ADDRESSES: Comments, information, or questions regarding this proposed rule should reference Docket No. EP 699 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Amy C. Ziehm at 202–245–0391. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board

proceedings, wherever possible.[1] To that end, the Board has existing rules that encourage parties to agree voluntarily to mediate or arbitrate certain matters subject to its jurisdiction. The Board's mediation rules are set forth at 49 CFR 1109.1, 1109.3, 1109.4, 1111.2, 1111.9, and 1111.10. Its arbitration rules are set forth at 49 CFR 1108, 1109.1, 1109.2, 1109.3, and 1115.8. In a decision served on August 20, 2010,[2] and published in the **Federal Register** on August 24, 2010,[3] the Board sought input regarding measures it might implement to encourage or require greater use of mediation, and to encourage greater voluntary use of arbitration, including making changes to the Board's existing rules and establishing new rules. The Board also sought input regarding possible changes to its rules to permit the use of Board-facilitated mediation procedures without the filing of a formal complaint. The Board served a subsequent notice in this matter on December 3, 2010,[4] to clarify that any comments filed by the Railroad-Shipper Transportation Advisory Council (RSTAC) would be accorded the same weight as other comments in developing any new rules.[5] The modifications to the Board's rules proposed in this decision are intended to increase the use of mediation and arbitration in lieu of formal adjudication to resolve disputes before the Board.

The proposed changes to the existing mediation rules would establish procedures under which the Board could compel mediation in certain types of adjudications before the Board, on a case-specific basis, as well as to grant mediation requests of parties to disputes.[6] As is the current practice, the Board would assign staff from its Rail Customer and Public Assistance (RCPA) program, who are trained mediators, to conduct the mediation process. Mediation periods would last up to 30 days, and could be extended upon the mutual request of the parties. The Board would reserve the right to stay underlying proceedings and toll any applicable statutory deadlines. The Board believes that the proposed mediation rules would be in the public interest. If a dispute is amicably resolved, the parties could do so at considerably less expense and in less time than if they used the Board's formal adjudicatory process, and could better preserve their ongoing commercial relationship.

The proposed changes to the Board's arbitration rules are intended to consolidate the separate arbitration procedures in Parts 1108 and 1109, to encourage greater use of arbitration to resolve disputes before the Board by simplifying the process, and by clarifying the types of disputes that may be submitted for arbitration.[7] Moreover, the Board proposes establishing an ''arbitration program'' to cover a subset of arbitrable disputes, in which rail carriers may voluntarily participate. The Board believes that the proposed arbitration program would provide value to both carriers and shippers, because disputes can be resolved through arbitration in a more timely and less adversarial fashion than through the Board's formal adjudicatory processes, and arbitration could help the parties to preserve their commercial relationship. It likewise would allow carriers more flexibility in resolving customer-specific disputes because resolution would be confidential and nonprecedential, unless the arbitrator's decision is appealed.

Under the arbitration program, rail carriers would agree, in advance, to submit to binding arbitration certain defined types of disputes, such as complaints related to demurrage and accessorial charges, or the misrouting or mishandling of rail cars, where the complainant seeks monetary damages for past harm, not for injunctive or prospective relief. The Board also proposes to limit the relief that an arbitrator could award to no more than $200,000, plus interest. Commenters are invited to suggest a different dollar cap that they believe would better capture the majority of such disputes that would be best resolved through arbitration. Arbitration under the arbitration program would be mandatory for the carrier either where the dispute involves only carriers that are participants in the Board's arbitration program, or where the dispute involves at least one carrier-participant and all other parties to the dispute consent to arbitration pursuant to the arbitration program.

In addition, the proposed rules provide for arbitration of most other types of adjudicatory disputes before the Board where all parties agree, on a case-by-case basis, to participate in binding arbitration. In all arbitrations, the Board would assign an arbitrator from a roster of eligible arbitrators, or could grant a mutual request from the parties to use a particular arbitrator, whether listed on the roster or not.

The proposed mediation and arbitration rules would not be available, however, to resolve any matter in which the Board is statutorily required to determine the public convenience and necessity (PCN). Thus, these procedures would not be available to obtain the grant, denial, stay or revocation of any license, authorization (e.g., construction, abandonment, purchase, trackage rights, merger, pooling) or exemption related to these matters. Should participants in such matters, however, reach a voluntary agreement resolving certain issues pertaining to a license or authorization proceeding, the Board would give due consideration to that resolution in weighing the PCN. These rules would also not be available to arbitrate a labor protection dispute, which has its own procedures; however, voluntary mediation of such disputes under the proposed rules would be available.

Additional information is contained in the Board's decision. The full decision is available on the Board's Web site at *www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Board proposes to amend its rules as set forth in this decision. Notice of the proposed rules will be published in the **Federal Register**.

2. Comments regarding these proposed rules are due by May 17, 2012. Replies are due by June 18, 2012.

3. This decision is effective on the day of service.

[1] Mediation is a process in which parties attempt to negotiate an agreement that resolves some or all of the issues in dispute, with the assistance of a trained, neutral, third-party mediator. Arbitration, by comparison, is an informal evidentiary process conducted by a trained, neutral, third-party arbitrator with expertise in the subject matter of the dispute. By agreeing to participate in arbitration, the parties agree to be bound (with limited appeal rights) by the arbitral decision.

[2] *Assessment of Mediation and Arbitration Procedures,* EP 699 (STB served Aug. 20, 2010).

[3] Assessment of Mediation and Arbitration Procedures, 75 FR 52,054.

[4] *Id.,* EP 699 (STB served Dec. 3, 2010).

[5] RSTAC is an advisory board established by Federal law to advise the U.S. Congress, the U.S. Department of Transportation, and the Board on issues related to rail transportation policy, with particular attention to issues of importance to small shippers and small railroads. By statute, RSTAC members are appointed by the Board's chairman. Representatives of large and small rail customers, Class I railroads, and small railroads sit on RSTAC. The Board's members and the U.S. Secretary of Transportation are *ex officio,* nonvoting RSTAC members. (49 U.S.C. 726.)

[6] The Board's authority to revise its mediation rules exists under 49 U.S.C. 721(a) and under the Alternative Dispute Resolution Act, 5 U.S.C. 571–584.

[7] The Board has authority to revise its arbitration rules under 49 U.S.C. 721(a).

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information.

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1108

Administrative practice and procedure, Railroads.

49 CFR Part 1109

Administrative practice and procedure, Maritime carriers, Motor carriers, Railroads.

49 CFR Part 1111

Administrative practice and procedure, Investigations.

49 CFR Part 1115

Administrative practice and procedure.

Decided: March 28, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend parts 1002, 1011, 1108, 1109, 1111, and 1115 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721. Section 1002.1(g)(11) also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

2. Amend § 1002.2 by revising paragraph (f)(87) and by removing and reserving paragraph (f)(88) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

Type of proceeding	Fee
* * * * *	
Part VI: Informal Proceedings	
* * * * *	
(87) Basic fee for STB adjudicatory services not otherwise covered	$250
(88) [Reserved].	
* * * * *	

* * * * *

PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

3. The authority citation for part 1011 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 701, 721, 11123, 11124, 11144, 14122, and 15722.

4. Amend § 1011.7 by adding paragraphs (a)(2)(xvii), (a)(2)(xviii) and (a)(2)(xix) to read as follows:

§ 1011.7 Delegations of authority by the Board to specific offices of the Board.

(a) * * *

(2) * * *

(xvii) To authorize parties to a proceeding before the Board, upon mutual request, to participate in meditation with a Board-appointed mediator, for a period of up to 30 days.

(xviii) To authorize a proceeding held in abeyance while mediation procedures are pursued, pursuant to a mutual request of the parties to the matter.

(xix) To order arbitration of program-eligible matters under the Board's regulations at 49 CFR Part 1108, or upon the mutual request of parties to a proceeding before the Board.

* * * * *

PART 1108—ARBITRATION OF CERTAIN DISPUTES SUBJECT TO THE STATUTORY JURISDICTION OF THE SURFACE TRANSPORTATION BOARD

5. The authority citation for part 1011 continues to read as follows:

Authority: 49 U.S.C. 721(a).

6. Revise § 1108.1 to read as follows:

§ 1108.1 Definitions.

As used in this part:

(a) *Arbitration program* means a program established by the Surface Transportation Board under which participating rail carriers have agreed voluntarily in advance to resolve certain types of disputes brought before the Board using the Board's arbitration procedures.

(b) *Arbitration program-eligible matters* are those disputes, or components of disputes, that may be resolved using the Board's arbitration program and include disputes involving one or more of the following subjects: Demurrage, accessorial charges; misrouting or mishandling of rail cars; disputes involving a carrier's published rules and practices as applied to particular rail transportation; and other service-related matters.

(c) *Arbitrator* means an arbitrator appointed pursuant to these rules.

(d) *Interstate Commerce Act* means the Interstate Commerce Act as amended by the ICC Termination Act of 1995.

(e) *STB* or *Board* means the Surface Transportation Board.

(f) *Statutory jurisdiction* means the jurisdiction conferred on the STB by the Interstate Commerce Act, including jurisdiction over rail transportation or services that have been exempted from regulation.

7. Amend § 1108.2 by revising paragraph (b) and removing paragraph (d) to read as follows:

§ 1108.2 Statement of purpose, organization, and jurisdiction.

* * * * *

(b) These procedures shall be available for use in the resolution of all matters arbitrated before the Board, other than matters involving labor protective conditions, which are subject to different rules. These procedures shall not be available to obtain the grant, denial, stay or revocation of any license, authorization (e.g., construction, abandonment, purchase, trackage rights, merger, pooling), or exemption related to such matters.

* * * * *

8. Revise § 1108.3 to read as follows:

§ 1108.3 Matters subject to arbitration.

(a) *Use of arbitration*—(1) *Arbitration program-eligible matters.* The Board shall assign to arbitration all arbitration program-eligible matters arising in a docketed proceeding where all parties to the proceeding are participants in the Board's arbitration program, or where one or more parties to the matter are participants in the Board's arbitration program, and all other parties to the proceeding request or consent to arbitration.

(2) *Matters partially arbitration program-eligible.* Where the issues in a proceeding before the Board relate in part to arbitration program-eligible matters, only those parts of the dispute related to arbitration program-eligible matters may be arbitrated pursuant to the arbitration program, unless the parties petition the Board in accordance with paragraph (a)(3) of this section to include non-arbitration program-eligible matters.

(3) *Other matters.* Parties may petition the Board, on a case-by-case basis, to assign to arbitration disputes, or portions of disputes, that do not relate to arbitration program-eligible matters, other than matters in which the Board is statutorily required to determine the public convenience and necessity and

those involving labor protective conditions.

(4) *Mutual agreement required.* The Board will not assign to arbitration any dispute in which one or more parties is not a participant in the Board's arbitration program and does not otherwise consent to arbitration.

(b) *Participation in the Board's arbitration program*—(1) *Class I and Class II rail carriers.* Class I and Class II rail carriers are deemed to have agreed in advance to participate in the Board's arbitration program, unless they have opted out of the program. To opt out, a Class I or Class II carrier shall do either of the following:

(i) File a notice, under docket number EP 699, informing the Board of its opt-out decision no later than 20 days following the effective date of these rules, and subsequently, no later than January 10 (or the immediately following business day) of each calendar year. Such notice shall take effect immediately.

(ii) File a notice with the Board, under docket number EP 699, at any time. Such notice shall take effect 90 days after filing and shall not excuse the filing carrier from arbitration proceedings that are ongoing, or permit it to withdraw its consent to participate in any arbitration program-eligible dispute associated with any matter pending before the Board at any time within the 90-day period before the opt-out notice takes effect. Class I and Class II rail carriers that opt out of the arbitration program will be deemed to be participants in the program in subsequent years if they do not file a new notice with the Board each year. A carrier that has opted out of the arbitration program may opt into the arbitration program at any time by notifying the Board. Opt-in notices shall take effect immediately.

(2) *Class III rail carriers.* A Class III rail carrier may participate in the Board's arbitration program by filing a written notice with the Board under docket number EP 699, advising the Board of its intent to participate in the program. Such notice may be filed at any time and shall take effect immediately. A participating Class III carrier shall remain a participant in the Board's arbitration program thereafter, unless it files a notice with the Board under docket number EP 699, advising the Board of its intent to cease participation in the arbitration program. Such notice shall take effect 90 days after filing and shall not excuse the filing carrier from arbitration proceedings that are ongoing, or permit it to withdraw its consent to participate in any arbitration program-eligible dispute associated with any matter pending before the Board at any time within the 90-day period before the opt-out notice takes effect.

(3) *Shippers and other parties.* Shippers and other parties may participate in arbitration-program eligible arbitrations on a case-by-case basis by filing notice with the Board. Such notice shall be filed under the docket number assigned to the proceeding, indicating agreement to participate in arbitration.

(c) *Arbitrator's authority.* In resolving any dispute subject to the Board's arbitration procedures, the arbitrator shall not be bound by any procedural rules or regulations adopted by the STB for the formal resolution of similar disputes, except as specifically provided in this Part 1108. The arbitrator, however, shall be guided by the Interstate Commerce Act and by STB and ICC precedent.

(d) *Arbitration clauses.* Nothing in the Board's regulations shall preempt the applicability of, or otherwise supersede, any new or existing arbitration clauses contained in agreements between shippers and carriers.

9. Amend § 1108.4 by revising paragraphs (a)(1) and (a)(2) and removing paragraph (b) to read as follows:

§ 1108.4 Relief.

(a) * * *

(1) Monetary damages, to the extent available under the Interstate Commerce Act, shall be available through the arbitration. In disputes arbitrated pursuant to the Board's arbitration program, damages shall not exceed $200,000, exclusive of interest at a reasonable rate to be specified by the arbitrator. Participants in the Board's arbitration program shall not be obligated to arbitrate any dispute in which the alleged damages exceed $200,000.

(2) No prospective or injunctive relief shall be available through the Board's arbitration program, or through any other arbitration before the Board.

* * * * *

10. Revise § 1108.5 to read as follows:

§ 1108.5 Fees and costs.

When parties use the Board's arbitration procedures to resolve a dispute, the party filing the complaint shall pay the applicable filing fee pursuant to 49 CFR Part 1002. The Board shall pay any fees and/or costs charged by the arbitrator, except where parties agree to use an arbitrator not included on the roster of arbitrators maintained by the Board, as described in § 1108.6(a), in which case the parties shall share the fees and/or costs of the arbitrator.

11. Revise § 1108.6 to read as follows:

§ 1108.6 Arbitrators.

(a) Arbitration shall be conducted by a single arbitrator selected, as provided herein, from a roster of persons (other than active government officials) experienced in rail transportation or economic issues similar to those capable of arising before the STB. The roster of arbitrators shall be established by the Chairman of the STB with input from interested parties who may nominate individuals for inclusion on the list. The roster shall thereafter be maintained and updated by the Chairman of the STB on an every other year basis. The roster may also be augmented or revised at any time, and interested parties are encouraged to nominate qualified individuals for addition to the list. The roster shall be available to the public, upon request, and shall be posted on the Board's Web site at *www.stb.dot.gov*.

(b) Matters arbitrated under these rules shall be resolved by a single neutral arbitrator, selected by the Board, from the roster of qualified arbitrators. If the parties to an arbitration proceeding mutually agree upon an arbitrator (whether listed on the roster or not) to resolve their dispute, they may petition the Board to appoint that arbitrator to the arbitration proceeding.

(c) If, at any time during the arbitration process, a selected arbitrator becomes incapacitated, unwilling, or unable to fulfill his/her duties, or if all parties agree that the arbitrator should be replaced, a replacement arbitrator will be selected promptly under the process set forth in paragraphs (a) and (b) of this section.

12. Revise § 1108.7 to read as follows:

§ 1108.7 Arbitration commencement procedures.

(a) Each arbitration under these rules shall commence with a written complaint, which shall be filed and served in accordance with Board rules contained at Part 1104. Each complaint must contain a statement that the complainant is a participant in the Board's arbitration program pursuant to § 1108.3(b), or that the complainant is willing to arbitrate voluntarily all or part of the dispute pursuant to the Board's arbitration procedures. Following the filing of a complaint whose subject matter is arbitration program-eligible, the Board shall issue a notice advising other parties of whether any carrier-parties to the matter are participants in the arbitration program.

(b) Any respondent must, within 20 days of the date of the filing of a

complaint, answer the complaint. The answer must state whether the respondent is a participant in the Board's arbitration program, or whether the respondent is willing to arbitrate on a voluntary basis. Where the respondent agrees to arbitrate voluntarily, the answer must identify those issues contained in the complaint that the respondent is willing to resolve through arbitration. The answer must also identify any issues contained in the complaint that the respondent is not willing to resolve through arbitration. If the answer contains an agreement to arbitrate some but not all of the arbitration issues in the complaint, the complainant will have 10 days from the date of the answer to advise the respondent and the Board in writing whether the complainant is willing to arbitrate on that basis. Where the respondent is a participant in the Board's arbitration program, the answer should further state that the respondent has thereby agreed to use arbitration to resolve all of the arbitration program-eligible issues in the complaint. The Board will then set the matter for arbitration, if appropriate, and assign an arbitrator.

13. Revise § 1108.8 to read as follows:

§ 1108.8 Arbitration procedures.

The arbitrator shall establish all rules for each arbitration proceeding, including with regard to discovery, the submission of evidence and the treatment of confidential information, subject to the requirements that the evidentiary process shall be completed within 90 days from the start date established by the arbitrator, and that the arbitrator's decision will be issued within 30 days following completion of the evidentiary phase.

14. Revise § 1108.9 to read as follows:

§ 1108.9 Decisions.

(a) Decisions of the arbitrator shall be in writing and shall contain findings of fact and conclusions.

(b) The arbitrator simultaneously shall serve a copy of the decision on the parties and upon the Board. The arbitrator may serve the decision via any service method permitted by the Board's regulations that is consistent with protecting the confidentiality of the decision, if so requested by the parties.

(c) By arbitrating pursuant to these procedures, each party agrees that the decision and award of the arbitrator shall be binding and judicially enforceable in law and equity in any court of appropriate jurisdiction, subject to a limited right of appeal to the STB, as provided below.

15. Revise § 1108.11 to read as follows:

§ 1108.11 Enforcement and appeals.

(a) A party may petition the Board to modify or vacate an arbitral award. The appeal must be filed within 20 days of service of a final arbitration decision, and is subject to the page limitations of § 1115.2(d) of this chapter. Copies of the appeal shall be served upon all parties in accordance with the Board's rules at Part 1104. The appealing party shall also serve a copy of its appeal upon the arbitrator. Replies to such appeals shall be filed within 20 days of the filing of the appeal with the Board, and shall be subject to the page limitations of § 1115.2(d) of this chapter.

(b) The timely filing of a petition will not automatically stay the effect of the arbitration decision. A stay may be requested under § 1115.3(f) of this chapter.

(c) The STB will review, and may modify or vacate, an arbitration award, in whole or in part, only on grounds that such award reflects a clear abuse of arbitral authority or discretion.

16. Revise Part 1109 to read as follows:

PART 1109—USE OF MEDIATION IN BOARD PROCEEDINGS

Sec.

1109.1 Mediation.
1109.2 Commencement of mediation.
1109.3 Mediation procedures.
1109.4 Mandatory mediation in rate cases to be considered under the stand-alone cost methodology.

Authority: 5 U.S.C. 571 *et seq.*

§ 1109.1 Mediation.

Parties may seek to resolve a dispute brought before the Board using the Board's mediation procedures. These procedures shall not be available to obtain the grant, denial, stay or revocation of any license, authorization (e.g., construction, abandonment, purchase, trackage rights, merger, pooling), or exemption related to such matters. The Board may, by its own order, direct the parties to participate in mediation using the Board's mediation procedures.

§ 1109.2 Commencement of mediation.

(a) *Availability of mediation.* Mediation may be commenced in a dispute before the Board:

(1) Pursuant to a Board order issued in response to a written request of one or more parties to a matter;

(2) Where the Board orders mediation by its own order; or

(3) In connection with a rate complaint, as provided by § 1109.4 and Part 1111 of this chapter.

(b) *Requests for mediation.* Parties wishing to pursue mediation may file a request for mediation with the Board at any time following the filing of a complaint. Parties that use Board mediation procedures shall not be required to pay any fees other than the appropriate filing fee associated with the underlying dispute, as provided at 49 CFR 1002.2. The Board shall grant any mediation request submitted by all parties to a matter, but may deny mediation where a mediation request is not submitted by all parties to a matter.

§ 1109.3 Mediation procedures.

(a) The Board will appoint a Board employee, who is a qualified mediator, to facilitate any dispute assigned for mediation. Alternatively, the parties to a matter may agree to use a non-Board mediator if they so inform the Board within 10 days of an order assigning the dispute to mediation. If a non-Board mediator is used, the parties shall share the fees and/or costs of the mediator. The following restrictions apply to any mediator selected by the Board or the parties:

(1) No person may serve as a mediator who has previously served as an advocate or representative, in any matter, for any party to the mediation;

(2) No person serving as a mediator may thereafter serve as an advocate for a party in any other proceeding arising from or related to the mediated dispute, including, without limitation, representation of a party to the mediation before any other federal court or agency; and

(3) If the mediation does not fully resolve all issues before the Board, the person serving as a mediator may not thereafter advise the Board regarding the future disposition of the dispute.

(b) Parties shall have 30 days from the date of the first mediation session to reach a settlement agreement, or to narrow the issues in dispute, or to agree to stipulations that may be incorporated into any adjudication before the Board if mediation does not fully resolve the dispute. The mediator may assist the parties in preparing a settlement agreement. The mediator shall notify the Board whether the parties have reached any agreement by the end of the 30-day period.

(c) Any settlement agreement reached during or as a result of mediation must be in writing, and signed by all parties to the mediation. The parties need not provide a copy of the settlement agreement to the Board, or otherwise make the terms of the agreement public, provided that the parties, or the mediator, notify the Board that the parties have reached a mutually

agreeable resolution, and request that the Board terminate the underlying Board proceeding. Parties to the settlement agreement shall waive all appeal rights as to the issues resolved by the settlement agreement.

(d) If the parties reach only a partial resolution of their dispute, they or the mediator shall so inform the Board, and the parties shall file any stipulations they have mutually reached, and ask the Board to reactivate the procedural schedule in the underlying proceeding to decide the remaining issues.

(e) The Board may extend mediation for additional periods of time not to exceed 30 days per period, pursuant to mutual written requests of all parties to the proceeding. The Board will not extend mediation for additional periods of time where one or more parties to a matter do not agree to an extension. The Board will not order mediation more than once in any particular proceeding, but may permit it if all parties to a matter mutually request another round of mediation.

(f) Mediation is a confidential process except for those limited exceptions permitted by the Administrative Dispute Resolution Act at 5 U.S.C. 574.

(1) All notes taken by participants (including but not limited to the mediator, parties, and their representatives) during the mediation must be destroyed following the conclusion of the matter subject to mediation. As a condition of participation, the parties and any interested parties joining the mediation must agree to the confidentiality of the mediation process. The parties to mediation, including the mediator, shall not testify in administrative or judicial proceedings concerning the issues discussed in mediation, nor submit any report or record of the mediation discussions, other than the settlement agreement with the consent of all parties, except as required by law.

(2) Evidence of conduct or statements made during mediation are not admissible in any Board proceeding. However, if mediation fails to result in a full resolution of the dispute, evidence that is otherwise discoverable may not be excluded from introduction into the record of the underlying proceeding merely because it was presented during mediation. Such materials may be used if they are disclosed through formal discovery procedures established by the Board or other adjudicatory body.

(g) Except as otherwise provided for in 49 CFR 1109.4(f) and Part 1111, the mutual request of all parties that a proceeding be held in abeyance while mediation procedures are pursued should be submitted to the Chief, Section of Administration, Office of Proceedings. The Board shall promptly issue an order in response to such requests. Except as otherwise provided for in 49 CFR 1109.4(f) and Part 1111, the Board may also direct that a proceeding be held in abeyance pending the conclusion of mediation. The period while any proceeding is held in abeyance to facilitate mediation shall not be counted toward any applicable statutory deadlines.

§ 1109.4 Mandatory mediation in rate cases to be considered under the stand-alone cost methodology.

(a) A shipper seeking rate relief from a railroad or railroads in a case involving the stand-alone cost methodology must engage in non-binding mediation of its dispute with the railroad upon filing a formal complaint under 49 CFR Part 1111.

(b) Within 10 business days after the shipper files its formal complaint, the Board will assign a mediator to the case. Within 5 business days of the assignment to mediate, the mediator shall contact the parties to discuss ground rules and the time and location of any meeting. At least one principal of each party, who has the authority to bind that party, shall participate in the mediation and be present at any session at which the mediator requests that the principal be present.

(c) The mediator will work with the parties to try to reach a settlement of all or some of their dispute or to narrow the issues in dispute, and reach stipulations that may be incorporated into any adjudication before the Board if mediation does not fully resolve the dispute. If the parties reach a settlement, the mediator may assist in preparing a settlement agreement.

(d) The entire mediation process shall be private and confidential. No party may use any concessions made or information disclosed to either the mediator or the opposing party before the Board or in any other forum without the consent of the other party.

(e) The mediation shall be completed within 60 days of the appointment of the mediator. The mediation may be terminated prior to the end of the 60-day period only with the certification of the mediator to the Board. Requests to extend mediation, or to re-engage it later, will be entertained on a case-by-case basis, but only if filed by all interested parties.

(f) Absent a specific order from the Board, the onset of mediation will not affect the procedural schedule in stand alone cost rate cases, set forth at 49 CFR 1111.8(a).

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

17. The authority citation for part 1111 continues to read as follows:

Authority: 49 U.S.C. 721, 10704, and 11701.

18. Amend § 1111.10 by revising paragraph (b) to read as follows:

§ 1111.10 Meeting to discuss procedural matters.

* * * * *

(b) *Simplified standards complaints.* In complaints challenging the reasonableness of a rail rate based on the simplified standards, the parties shall meet, or discuss by telephone or through email, discovery and procedural matters within 7 days after the mediation period ends. The parties should inform the Board as soon as possible thereafter whether there are unresolved disputes that require Board intervention and, if so, the nature of such disputes.

PART 1115—APPELLATE PROCEDURES

19. The authority citation for part 1115 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

20. Revise § 1115.8 to read as follows:

§ 1115.8 Petitions to review arbitration decisions.

An appeal of right is permitted. The appeal must be filed within 20 days of a final arbitration decision, unless a later date is authorized by the Board, and is subject to the page limitations of § 1115.2(d). The standard of review will be whether there is a showing of a clear abuse of arbitral authority or discretion. The timely filing of a petition will not automatically stay the effect of the arbitration decision. A stay may be requested under § 1115.3(f).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 110328226–2189–02]

RIN 0648–XA272

Listing Endangered and Threatened Species; 12-Month Finding on a Petition To List Chinook Salmon in the Upper Klamath and Trinity Rivers Basin as Threatened or Endangered Under the Endangered Species Act

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

ACTION: Status review; notice of finding.

SUMMARY: We, NMFS, announce a 12-month finding on a petition to list the Chinook salmon (*Oncorhynchus tshawytscha*) in the Upper Klamath and Trinity Rivers Basin (UKTR) as threatened or endangered and designate critical habitat under the Endangered Species Act (ESA). We have reviewed the status of the UKTR Chinook salmon Evolutionarily Significant Unit (ESU) and considered the best scientific and commercial data available, and conclude that the petitioned action is not warranted. In reaching this conclusion, we conclude that spring-run and fall-run Chinook salmon in the UKTR Basin constitute a single ESU. Based on a comprehensive review of the best scientific and commercial data currently available, and consistent with the 1998 status review and listing determination for the UKTR Chinook salmon ESU, the overall extinction risk of the ESU is considered to be low over the next 100 years. Based on these considerations and others described in this notice, we conclude this ESU is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so in the foreseeable future.

DATES: The finding announced in this notice was made on April 2, 2012.

ADDRESSES: Information used to make this finding is available for public inspection by appointment during normal business hours at the office of NMFS Southwest Region, Protected Resources Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802. This file includes the status review report, information provided by the public, and scientific and commercial information gathered for the status review. The petition and the status review report can also be found at: *http://swr.nmfs.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario at (562) 980–4085 or Ann Garrett at (707) 825–5175, NMFS, Southwest Region Office; or Lisa Manning at (301) 713–1401, NMFS, Office of Protected Resources.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2011, the Secretary of Commerce received a petition from the Center for Biological Diversity, Oregon Wild, Environmental Protection Information Center, and The Larch Company (hereafter, the petitioners), to list Chinook salmon (*Oncorhynchus tshawytscha*) in the Upper Klamath Basin under the ESA. Because their request is generally made in reference to the UKTR ESU of Chinook salmon, we use the description of that ESU (Myers *et al.,* 1998 and 63 FR 11482; March 9, 1998) as the area in which they are requesting that we list Chinook salmon, and hereafter refer to that area as the Upper Klamath and Trinity Rivers basin. The petitioners identified three alternatives for listing Chinook salmon in the UKTR ESU: (1) Listing spring-run Chinook salmon in the UKTR ESU as a separate ESU; (2) listing spring-run Chinook salmon in the UKTR ESU as a distinct population segment within the currently defined UKTR Chinook salmon ESU; or (3) listing the currently defined UKTR Chinook salmon ESU, which includes both spring-run and fall-run populations. The petitioners also requested that we designate critical habitat for any Chinook salmon populations found to warrant listing.

After reviewing the petition, the literature cited in the petition, and other literature and information available in our files, we found that the petition met the criteria in our implementing regulations at 50 CFR 424.14(b)(2) that are applicable to our 90-day review and determined that the petition presented substantial information indicating that the petitioned action may be warranted (76 FR 20302; April 12, 2011). In that 90-day finding, we explained why we would not further consider Petitioners' second alternative for listing Chinook salmon in the UKTR ESU. We described NMFS' Policy on Applying the Definition of Species Under the Endangered Species Act to Pacific Salmon (ESU Policy; 56 FR 68612; November 20, 1991), which explains that a Pacific salmon stock will be considered a distinct population segment, and hence a ''species'' under the ESA, if it represents an ESU of the biological species. We also explained the two criteria for delineating an ESU. Under its second alternative, Petitioners suggest that, even if we determine that spring-run Chinook salmon in the UKTR ESU do not meet the criteria to be delineated as a separate ESU under the ESU Policy, we should apply the two criteria under the U.S. Fish and Wildlife Service (USFWS) and NMFS Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (DPS Policy; 61 FR 4722; February 7, 1996) to determine that spring-run Chinook salmon in the UKTR ESU are a separate distinct population segment within the UKTR ESU. As we described in the 90-day finding, NMFS will continue to apply the criteria in the ESU Policy to Pacific salmon, which includes Chinook salmon, rather than the criteria in the DPS Policy. Because the ESU Policy explains under what criteria Pacific salmon populations will be considered a distinct population segment, and hence a ''species'' under the ESA, if we evaluate spring-run Chinook salmon in the UKTR according to the criteria of the ESU Policy, we will be determining whether spring-run Chinook salmon are considered a distinct population segment. In the 90-day finding, we also solicited information pertaining to the species and the issues raised in the petition. Following publication of our 90-day finding, we commenced a status review of Chinook salmon in the UKTR ESU. In response to the 90-day finding we received over 50 written comments from the public, which we considered in making this 12-month finding.

In support of the status review, NMFS' Southwest Fisheries Science Center (SWFSC) convened a Biological Review Team (BRT) charged with compiling and reviewing the best available scientific and commercial information on Chinook salmon necessary to: (1) Evaluate whether this information supports the current UKTR Chinook salmon ESU configuration or the separation of spring-run and fall-run Chinook salmon into separate ESUs; and (2) assess the biological status of Chinook salmon populations comprising whichever ESU configuration was best supported by the available information using NMFS' viable salmonid population (VSP) framework for the analysis. The BRT was composed of scientists from the SWFSC and Northwest Fisheries Science Center, USFWS, and U.S. Forest Service with expertise in the biology, genetics, and ecology of UKTR ESU Chinook salmon. The BRT compiled, reviewed, and evaluated the best available scientific and commercial

information concerning the ESU configuration and biological status of spring-run and fall-run Chinook salmon populations in the UKTR basin, including information provided by the petitioners, peer-reviewed literature, information provided by other parties interested in this issue, and other information deemed pertinent by the BRT. Following its review, the BRT prepared a report summarizing the information they reviewed, their analysis, and conclusions regarding ESU configuration and biological status (Williams *et al.,* 2011). This report was peer reviewed by two independent scientific experts who have expertise with salmon and steelhead issues in the Klamath Basin. One reviewer has specific expertise on UKTR Chinook salmon genetics, and the other reviewer has expertise in the ecology of UKTR Chinook salmon. The reviewers' comments were incorporated into the final report.

If a petition is found to present substantial scientific information indicating that the petitioned action may be warranted, ESA section 4(b)(3)(B) (16 U.S.C. 1533(b)(3)(B)) requires the Secretary of Commerce to make a finding within 12 months of receipt of the petition (commonly referred to as a 12-month finding) as to whether a petitioned action is warranted. The Secretary has delegated the authority to make this finding to the NOAA Assistant Administrator for Fisheries. This **Federal Register** notice documents our 12-month finding on this petition.

Species Background

Information on the biology and life history of UKTR Chinook salmon is summarized in Myers *et al.* (1998) and a listing determination for west coast Chinook salmon (63 FR 11482; March 9, 1998). In 1998, NMFS completed a status review of the UKTR Chinook salmon ESU and found that it is comprised of both spring-run and fall-run populations (Myers *et al.,* 1998), as will be further described in the following section. Historically, spring-run Chinook salmon were likely the predominant run type in the Klamath-Trinity River Basin (Myers *et al.,* 1998). Most spring-run spawning and rearing habitat was blocked by the construction of dams in the late 1800s and early 1900s in the Klamath River and in the 1960s in the Trinity River Basin (Myers *et al.,* 1998). As a result of these and other factors, spring-run populations were considered to be at less than 10 percent of their historical levels (Myers *et al.,* 1998). Fall-run populations now comprise the majority of UKTR Chinook salmon. Most of the spring-run populations are currently distributed throughout the New, South Fork Trinity, Upper Trinity, and Salmon rivers. The more widely distributed fall-run Chinook salmon inhabit most accessible streams in the ESU, though their distribution generally does not extend as far into the tributary drainages as spring-run Chinook salmon. As with all Chinook salmon populations south of the Columbia River, the majority of Chinook salmon in the UKTR ESU exhibit an ''ocean-type'' life history with juveniles migrating to the ocean within one year of hatching (Myers *et al.,* 1998). Anadromous salmonids in California, like UKTR Chinook salmon, exist at the southern edge of their range along the west coast of North America.

Two hatcheries are operated in the UKTR basin, Iron Gate Hatchery on the Klamath River and Trinity River Hatchery on the Trinity River, that annually release large numbers of spring-run and fall-run Chinook salmon fingerlings and yearlings into the basin. Marine recoveries of coded-wire tags indicate that hatchery-origin fall- and spring-run Chinook salmon from these hatcheries have a similar coastal distribution offshore of California and Oregon (Myers *et al.,* 1998).

Species Delineation

ESA Section 3(16) (16 U.S.C. 1532(16)) defines a ''species'' to include any subspecies of fish or wildlife or plant, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. In 1991, we published the ESU Policy (56 FR 58612; November 20, 1991), which describes how we apply the definition of ''species'' in evaluating Pacific salmon populations for listing under the ESA. Under this policy, a group of Pacific salmon populations is considered an ESU if it is (1) reproductively isolated from other con-specific population units, and (2) represents an important component in the evolutionary legacy of the species. Under this policy, an ESU is considered to be a ''distinct population segment'' and thus a ''species'' under the ESA.

ESU Configuration

Based on biological, genetic, and ecological information compiled and reviewed as part of a previous west coast status review for Chinook salmon (Myers *et al.,* 1998), we included all spring-run and fall-run Chinook salmon populations in the Klamath River Basin upstream from the confluence of the Klamath and Trinity rivers in the UKTR Chinook salmon ESU (Myers *et al.,* 1998 and 63 FR 11482, 11487; March 9, 1998). The petitioners contend new information demonstrates that spring-run and fall-run Chinook salmon in the UKTR ESU qualify as separate ESUs based on significant and persistent genetic and reproductive isolation resulting from their different run timing. They further argue that the genetic differences between spring-run and fall-run Chinook salmon in the UKTR Chinook salmon ESU are comparable to genetic differences between spring-run and fall-run Chinook salmon in California's Central Valley, which are recognized as separate ESUs by NMFS (Myers *et al.,* 1998 and 70 FR 37160; June 28, 2005). The BRT carefully reviewed the petition and all other available and relevant information regarding the ESU configuration of Chinook salmon populations in the UKTR basin and prepared a report detailing their review and conclusions (Williams *et al.,* 2011).

Under our ESU policy, Williams *et al.* (2011) indicate that for spring-run and fall-run Chinook salmon populations in the UKTR ESU to be considered separate ESUs, they would need to be substantially reproductively isolated from each other, and they each must represent an important component in the evolutionary legacy of the species. Under the ESU Policy framework, they indicate that the concept of evolutionary legacy implies there would need to be a monophyletic pattern in the evolutionary history of each of the two run types within the UKTR basin, and that spring-run Chinook salmon individuals and populations would need to be more similar genetically to each other than to fall-run Chinook salmon individuals and populations.

As discussed in Williams *et al.* (2011), NMFS has delineated populations of spring-run and fall-run Chinook salmon in the same basin as separate ESUs in only two areas: California's Central Valley and in the interior Columbia River Basin. Chinook salmon populations in the Central Valley are monophyletic in origin, meaning they descended from a common ancestor and are more closely related to each other than to Chinook salmon populations in any other basin on the west coast. However, there is significant genetic divergence between most naturally spawning populations of fall-run and spring-run Chinook salmon that occur in the same rivers in the Central Valley and both run types are monophyletic rather than polyphyletic. For these and other reasons, NMFS separated spring-run and fall-run Chinook populations in the Central Valley into separate ESUs. In the interior Columbia Basin, spring-run and fall-run Chinook salmon are not

closely related genetically and represent two very divergent evolutionary lineages (Myers *et al.,* 1998; Waples *et al.,* 2004), and therefore were placed into separate ESUs.

In contrast, spring-run and fall-run Chinook salmon populations found in the coastal basins in California, Oregon, and Washington or the lower Columbia River basin have not been separated into separate ESUs despite differences in adult run-timing, life-history strategies, and other phenotypic characteristics that sometimes accompany genetic differences (Williams *et al.,* 2011). The primary reason for not separating fall-run and spring-run Chinook salmon into separate ESUs in these coastal basins is that their genetic population structure strongly suggests a polyphyletic pattern of run timing evolution (Myers *et al.,* 1998; Waples *et al.,* 2004), with spring and fall-run life histories having evolved on multiple occasions in different watersheds. Williams *et al.* (2011) indicate this polyphyletic pattern of run timing is observed in watersheds adjacent to the Klamath basin and across a range of watershed sizes in California (Mad River, Redwood Creek and Eel River) and Oregon (Rogue and Umpqua rivers).

Williams *et al.* (2011) reviewed new genetic information for Chinook salmon populations in the UKTR ESU (Banks *et al.,* 2000a; Kinziger *et al.,* 2008a; Kinziger *et al.,* 2008b; Kinziger *et al.,* In Preparation,), as well as other studies (Lindley *et al.,* 2004; Waples *et al.,* 2004; Garza *et al.,* 2007), to assess patterns of genetic population structure and population differentiation within the UKTR ESU and to compare those patterns with what has been observed in other basins (e.g., Central Valley and other coastal watersheds). Kinziger *et al.* (2008a) found that there are four genetically differentiated and geographically separated groups of Chinook salmon populations in the UKTR basin and that spring-run and fall-run Chinook life histories have evolved independently and in parallel within both the Salmon and Trinity rivers. Kinziger *et al.* (In Preparation) documented the same geographic population structure reported by Kinziger *et al.* (2008a) and indicated the genetic difference between populations was related to geographic distance and was independent of run timing (i.e., spring-run versus fall-run). In addition, they found that spring-run and fall-run populations in the Salmon River were nearly indistinguishable genetically and that spring and fall-run populations in the South Fork Trinity were extremely similar to each other and to the Trinity River hatchery stocks. Banks *et al.* (2000a) reported they found greater genetic distances between some fall-run populations than among fall-run and spring-run populations in the Klamath Basin and concluded that populations diverged according to geographic location first and life history second. Banks *et al.* (2000a) emphasized that this pattern of geographic differentiation is in strong contrast to that found for Chinook salmon populations in the Central Valley.

The petition contends that genetic differentiation of Chinook salmon populations in the UKTR ESU and the Central Valley is of a similar scale, and that our separation of spring and fall-run Chinook into separate ESUs in the Central Valley means that spring-run and fall-run Chinook salmon in the UKTR ESU should also be separated. The structure of Central Valley spring-run and fall-run Chinook salmon populations was recently reviewed by Lindley *et al.* (2004), Good *et al.* (2005), and Garza *et al.* (2007), all of whom supported the general conclusions that: (1) Central Valley Chinook salmon of all run-types represent a separate lineage from Chinook salmon populations found in coastal watersheds; and (2) Central Valley spring-run populations are monophyletic, with spring-run Chinook salmon from different basins more closely related to each other than to fall-run Chinook salmon from the same basin. Lindley *et al.* (2004), Good *et al.* (2005), and Garza *et al.* (2007) also support the conclusion of Banks *et al.* (2000a, 2000b) that the genetic population structure and genetic variation observed in Chinook salmon populations in the Central Valley is organized by life history (run-type) rather than geographic location, unlike that which is observed with the UKTR Chinook salmon populations where Chinook salmon populations are organized by geographic location rather than life history type (see Banks *et al.,* 2000a).

Based on a review and evaluation of this information, Williams *et al.* (2011) concluded that spring-run and fall-run Chinook salmon populations in the UKTR ESU constitute a single ESU as originally defined by Myers *et al.* (1998), and that the expression of the spring-run life-history variant is polyphyletic in origin in all of the populations in the ESU for which data are available.

UKTR spring-run Chinook salmon do not warrant being separated into a separate ESU because they fail to meet the reproductive isolation and evolutionary legacy criteria in our ESU Policy for Pacific Salmon. The available genetic evidence considered by Williams *et al.* (2011) clearly demonstrates that spring-run and fall-run Chinook salmon populations in the UKTR basin are genetically very similar and are not substantially reproductively isolated from each other. The degree of genetic differentiation between spring and fall-run Chinook salmon in the UKTR basin is comparable to that observed in other coastal basins that support the two run types (Waples *et al.,* 2004) and is much less than that which has been observed in the Interior Columbia Basin and the Central Valley where the two run types have been separated into different ESUs. The available evidence indicating that spring-run and fall-run Chinook salmon in the UKTR basin are polyphyletic in origin and have evolved on multiple occasions, together with the ocean type life-history characteristics exhibited by both run types, suggests that spring-run Chinook salmon do not represent an important component in the evolutionary legacy of the species.

Hatchery Stocks

In 2005, NMFS published a policy on how it would consider hatchery-origin fish when making ESA listing determinations for Pacific salmon and steelhead (Hatchery Listing Policy; 70 FR 37204; June 28, 2005). Under this policy, hatchery stocks are considered part of an ESU in making ESA listing determinations if their level of genetic divergence relative to local natural populations is no more than what occurs between natural populations in the ESU. NMFS used this policy and a previous assessment of all west coast hatchery programs (NMFS 2003) to determine which hatchery stocks would be considered part of west coast salmon and steelhead ESUs in a series of listing determinations published in 2005 and 2006, respectively (70 FR 37160; June 28, 2005 and 71 FR 834; January 5, 2006). The assessment of hatchery stocks (NMFS 2003) used to support these listing determinations evaluated each hatchery stock associated with individual salmon and steelhead ESUs to determine its level of genetic divergence relative to natural populations. Based on this assessment and application of our Hatchery Listing Policy (70 FR 37204; June 28, 2005), we determined that hatchery stocks that were no more than moderately divergent from natural populations would be considered part of an ESU in making listing determinations under the ESA.

Iron Gate Hatchery (IGH) produces fall-run Chinook salmon and releases approximately 6 million fish (fingerlings and yearlings combined) annually in the upper Klamath River. Trinity River

Hatchery (TRH) produces both fall-run and spring-run Chinook salmon and releases approximately 3 million fall-run fish (fingerlings and yearlings combined) and 1.3 million spring-run fish (fingerlings and yearlings combined), respectively, annually in the Trinity River. The SWFSC reviewed and evaluated the available information on broodstock origin, history, and genetics for these three Chinook salmon hatchery stocks and concluded that each stock was founded from a local, native population in the watershed where fish are released and that each stock is no more than moderately divergent from other local, natural populations. Moderate divergence in this case means that the hatchery stocks and local natural populations are no more genetically divergent than what is observed between closely related natural populations. Based on this assessment and the criteria in our Hatchery Listing Policy, we conclude that these three hatchery stocks are part of the UKTR Chinook salmon ESU.

UKTR Chinook Salmon Biological Status

Williams *et al.* (2011) assessed the biological status of the UKTR Chinook salmon ESU using methods similar to those described in Good *et al.* (2005). In conducting their review, Williams *et al.* (2011) considered the best available information on the species' current distribution, historical abundance, recent abundance, trends in abundance, population growth rates, the distribution of hatchery-origin spawners in natural areas, and fishery exploitation rates. To the extent possible, Williams *et al.* (2011) evaluated the available data on the basis of putative population units that are currently recognized by management agencies in the Klamath Basin such as sub-basin units (e.g., Scott River) or specific geographic areas (e.g., upper Klamath River mainstem). Wherever possible, spring-run and fall-run Chinook salmon populations were assessed separately within specific population units. The following discussion summarizes the biological status assessment of UKTR Chinook salmon from Williams *et al.* (2011).

Current Distribution and Historical Abundance

Williams *et al.* (2011) concluded there have been no changes to the distribution of UKTR Chinook salmon since the review of Myers *et al.* (1998). Williams *et al.* (2011) summarized information from Myers *et al.* (1998) and the California Department of Fish and Game (CDFG 1965) that indicates the historical abundance of Chinook salmon in the UKTR ESU was estimated to be approximately 130,000 adults in 1912 (based on peak cannery pack of 18,000 cases) and 168,000 adults in 1963, with the 1963 abundance estimate from CDFG split evenly between Klamath and Trinity rivers.

Recent Abundance, Trends in Abundance, and Population Growth Rate

As reported in Williams *et al.* (2011), the numbers of adults returning to spawning grounds (e.g., Upper Klamath, Trinity, Scott, Salmon, and Shasta rivers and smaller tributaries) and returns to Iron Gate and Trinity River hatcheries are monitored using a variety of methods by a combination of State, Federal, and Tribal agencies. Williams *et al.* (2011) characterized the recent spawner abundance in a manner that was consistent with the previous coast-wide salmon and steelhead status reviews (Good *et al.,* 2005). Based on this analysis, recent spawner abundance estimates of both fall-run and spring-run Chinook salmon returning to spawn in natural areas are generally low compared to historical estimates of abundance; however, the majority of populations have not declined in spawner abundance over the past 30 years (i.e., from the late 1970s and early 1980s to 2010) except for the Scott and Shasta rivers where there have been modest declines. While the BRT considered and presented both short- and long-term population growth rate, to be consistent with Good *et al.* (2005), the BRT stated that they viewed population growth rates based on just 13 years of data with caution given the highly variable population dynamics typical of salmon populations and influences of shifting environmental conditions. Of most interest to the BRT were the long-term population growth rates of the populations individually and the ESU as a whole.

Williams *et al.,* (2011) reported that short-term trends in spawner abundance declined slightly for about half of the population components over the past 13 years, and that fall-run Chinook salmon returns to Trinity River hatchery have been more variable than returns of fall-run Chinook salmon to Iron Gate hatchery. Williams *et al.* (2011) found that hatchery returns did not mirror (or did not track) escapement to natural spawning areas. Overall, Williams *et al.* (2011) concluded that there has been little change in the abundance levels, trends in abundance, or population growth rates since the review by Myers *et al.* (1998). They noted, however, as did Myers *et al.* (1998), that the recent abundance levels of some populations are low, especially in the context of historical abundance estimates. This was most evident with respect to two of the three spring-run population units that were evaluated (Salmon River and South Fork Trinity River).

Hatchery-origin Spawners in Natural Areas

Williams *et al.* (2011) evaluated the occurrence of hatchery-origin Chinook salmon spawners in several natural spawning areas (i.e., Bogus Creek and the Upper Klamath, Shasta, Scott, Salmon, Trinity, and South Fork Trinity rivers) over the past decade and concluded that the majority of hatchery-origin Chinook salmon that stray to natural areas do so in areas adjacent to the hatcheries. This is not unexpected since both hatcheries release fingerlings and yearlings ''on-site,'' as opposed to other locations further downstream in the basin. This finding was supported by recent genetic analyses from Kinziger *et al.* (In Preparation) that found strong evidence for genetic isolation-by-distance that is inconsistent with hatchery-origin fish straying in large numbers throughout the basin.

Extinction Risk Assessment

Williams *et al.* (2011) used a risk matrix approach to assess the viable salmonid population (VSP) criteria (i.e., abundance, productivity, spatial structure, and diversity) for the UKTR Chinook salmon ESU. This approach was used in the most recent west coast salmon and steelhead status reviews (Good *et al.,* 2005) and the details of the methodology are described in both Williams *et al.* (2011) and Good *et al.* (2005). Based on this risk matrix approach, Williams *et al.* (2011) concluded that the UKTR Chinook salmon ESU was at a relatively low risk of extinction based on abundance, growth rate and productivity, and spatial structure and connectivity; and the UKTR Chinook salmon ESU was at a moderate risk of extinction based on diversity. The following sections briefly summarize the conclusions of Williams *et al.* (2011) regarding each of the four VSP criteria.

Abundance

Abundance of spawning populations in the ESU appear to have been fairly stable for the past 30 years and since the review by Myers *et al.* (1998). Although current levels of abundance are generally low compared with historical estimates of abundance, the current abundance levels do not constitute a major risk in terms of ESU extinction. Long-term population growth rates are positive for most population

components that were analyzed, indicating they are not currently in decline and, in general, most populations are large enough to avoid genetic problems.

Growth Rate and Productivity

There is no indication that growth rates or productivity of populations have changed since the review of Myers *et al.* (1998); however, the impact of hatchery-origin fish in some locations and in some years is uncertain and is a concern. Based on the available information, hatchery influence appeared to be most concentrated in areas adjacent to the two hatcheries, and spawning survey information (i.e., estimates of adipose fin-clipped fish) and genetic analyses suggest there is a low hatchery fish influence elsewhere in the ESU.

Spatial Structure and Connectivity

There is a broad geographic distribution of fall-run Chinook salmon throughout the UKTR ESU, with genetic data (*i.e.,* isolation-by-distance information) indicating that there is connectivity among populations. There are no cases where fall-run Chinook were found to be locally extirpated and the spatial distribution of fall-run Chinook salmon in the UKTR ESU indicates that it currently occupies all accessible available habitat. Conversely, spring-run Chinook population numbers are low, with few if any spring-run fish recently observed in the Scott and Shasta rivers. The geographic distribution of spring-run Chinook salmon is of some concern, with possible extirpations perhaps reflecting the effects of low water years and habitat accessibility.

Diversity

Although there are extant spring-run and fall-run Chinook salmon populations in the basin, the low spawner abundance in spring-run populations continues to be a concern, as it was in the previous review (Myers *et al.,* 1998). In addition to the continued presence of both the spring-run and fall-run life-history types in the basin, the presence of large sub-yearlings in the Shasta River was considered evidence of continuing life history diversity in the ESU. Hatchery influence in natural spawning areas near the two hatcheries is a concern because of its possible impacts on the productivity and diversity of natural spawning Chinook salmon populations in those areas, but hatchery-origin fish appear to be most concentrated in relatively small areas located near the two hatcheries rather than elsewhere throughout the geographic area occupied by the ESU.

To assess the overall extinction risk of the UKTR Chinook salmon ESU, Williams *et al.* (2011) employed a methodology (the Forest Ecosystem Management Assessment Team, (FEMAT) approach) that has been used in previous west coast salmon status reviews (see Good *et al.,* 2005). Under this approach, the members of the BRT made informed professional judgments about whether the UKTR Chinook salmon ESU was presently in one of three extinction risk categories: ''high risk,'' ''moderate risk,'' and ''neither at high risk or moderate risk'' (low risk) based on the results of the VSP criteria assessment and other relevant information on the status of the ESU as discussed previously. In its assessment, the BRT members interpreted the high risk category as ''a greater than 5% risk of extinction within 100 years'', and the moderate risk category as ''more likely than not risk of moving into the high risk category within 30–80 years.'' Beyond these time horizons, the BRT members concluded it was difficult with any degree of confidence to project ESU extinction risk. Based on this assessment process, Williams *et al.* (2011) concluded that the UKTR Chinook salmon ESU was at a low risk of extinction in the next 100 years, although the BRT did express some uncertainty as to whether the ESU was at low risk or moderate risk of extinction (Table 5, Williams *et al.,* 2011).

Under NMFS' Hatchery Listing Policy, any hatchery stocks that are part of an ESU must be considered in status assessments for the ESU if it is being considered for possible listing (70 FR 37204; June 28, 2005). As discussed in the policy, any status assessment of an ESU which includes hatchery stocks should evaluate the manner in which the hatchery stocks contribute to conserving natural populations by considering their impact on the VSP criteria for natural populations comprising the ESU. As noted previously, the SWFSC determined that the fall-run Chinook salmon stock from IGH and the spring-run and fall-run Chinook salmon stocks from TRH are no more than moderately diverged from the local, natural populations, and as a result NMFS has concluded that these three hatchery stocks are part of the UKTR Chinook salmon ESU. Based on the hatchery operations and releases, as well as the assessment of hatchery-origin fish spawning in natural areas presented by Williams *et al.* (2011), we conclude that these three hatchery stocks: (1) Slightly reduce ESU extinction risk by increasing abundance of Chinook salmon in the UKTR ESU; (2) have a neutral or uncertain effect on ESU extinction risk associated with productivity and spatial structure because hatchery origin fish spawn in natural areas primarily near the hatcheries and naturally produced Chinook salmon populations are widely distributed throughout the basin; and (3) have a slightly increased effect on ESU extinction risk associated with diversity because of the potential impacts of hatchery fish on naturally spawning populations near the hatcheries. Overall, we conclude that including these three hatchery stocks in the UKTR Chinook salmon ESU does not appreciably alter the Williams *et al.* (2011) assessment of the VSP status of the UKTR Chinook salmon ESU or its extinction risk.

As part of their status review, Williams *et al.* (2011) assessed whether there are portions of the UKTR Chinook Salmon ESU that would constitute a significant portion of its range. In making this assessment they considered a portion of the range to be significant if its contribution to the overall viability of the ESU was so important that, without it, the ESU would be in danger of extinction. The geographical range of the ESU they considered in their assessment was the current geographical distribution of Chinook salmon in the UKTR ESU, and thus they did not consider inaccessible portions of the historical range of Chinook salmon upstream of dams. These considerations are consistent with interpretations and principles in the NMFS and USFWS Draft Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species,'' which we consider as nonbinding guidance in making listing determinations until a final policy is published (76 FR 76987; December 9, 2011). Lastly, they assumed that a significant portion of the ESU's range could be a geographic sub-unit of the current ESU (e.g., the Salmon River) or a life-history variant (spring-run or fall-run life-history type), but based on the petition, focused their assessment on whether the spring-run Chinook salmon component of the UKTR ESU constituted a significant portion of the ESU's range.

Williams *et al.* (2011) concluded that Chinook salmon are distributed broadly throughout the UKTR ESU and that there is connectivity among the component populations in the basin based on the available genetic information. Within the current geographic range of the ESU, they did

not find any situations where there was substantial unused habitat (i.e., extirpations) and concluded the spatial distribution of Chinook salmon in the ESU appeared to be appropriate given the current condition of the habitat. Williams *et al.* (2011) expressed concern about the overall status of spring-run Chinook salmon populations in the UKTR Chinook salmon ESU, but they did not conclude that these populations were at immediate risk of extinction (i.e., within the timeframe of generations as opposed to tens of generations) or that their demographic status posed an immediate risk of extinction to the ESU. The complete loss of spring-run Chinook salmon is unlikely in the foreseeable future, but if that occurred Williams *et al.* (2011) indicated it would reduce the viability of the ESU by reducing its overall diversity. Despite such a reduction in the viability of the ESU, the BRT concluded that the complete loss of spring-run would not result in an immediate risk of extinction to the UKTR Chinook Salmon ESU. Based on these considerations, we conclude that spring-run Chinook salmon do not constitute a significant portion of the range of the UKTR Chinook salmon ESU.

Summary of Factors Affecting the UKTR Chinook Salmon ESU

Section 4(a)(1) of the ESA (16 U.S.C. 1533(a)(1)) and NMFS' implementing regulations (50 CFR Part 424) set forth factors and procedures for listing species. NMFS must determine if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) its overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. NMFS has previously reviewed and evaluated these listing factors for west coast Chinook salmon, including those populations that comprise the UKTR Chinook salmon ESU (63 FR 11482, March 9, 1998; and NMFS 1998). These reviews have identified a wide range of factors that have adversely impacted Chinook salmon and their habitat on the west coast as well as in the UKTR ESU. The following discussion is based on those reviews and other more recent sources of information.

Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Previous reviews as cited above have identified a range of historical and ongoing land management activities and practices that adversely impact freshwater habitat used by Chinook salmon in the UKTR ESU, including construction of dams and other barriers that block access to historical habitat, water diversions, agriculture, timber harvest, road construction, grazing, and mining. The impacts associated with these activities have altered or in some cases eliminated habitat for Chinook salmon. A more detailed discussion of the impacts associated with these activities can be found in Nehlsen *et al.* (1991), Moyle (2002), and NRC (2004).

Within the freshwater range of the UKTR ESU there are two important migration barriers that block access to historical spawning and rearing habitat: Iron Gate Dam on the Klamath River (DOI and CDFG 2011) and Lewiston Dam on the Trinity River (DOI 2000). Many of the streams blocked by these dams were high quality snowmelt-driven tributaries or groundwater dominated streams that supported adult spring-run and fall-run Chinook salmon (Moyle 2002). The presence of these dams has impacted the production of both spring-run and fall-run Chinook salmon in the UKTR ESU, but they have had a greater impact on the distribution and abundance of spring-run Chinook salmon (63 FR 11482; March 9, 1998).

Water diversion and agricultural activities in the Klamath River and Trinity River basins have altered the timing and volume of flows in streams, reduced habitat availability, reduced water quality, and contributed to the reduced productivity of natural-origin Chinook salmon (NMFS 2010; DOI 2000). Stream water is diverted for consumptive use in the Upper Klamath Basin, in the Shasta and Scott River valleys, and from the Trinity River into other river basins (e.g., Rogue River, Sacramento River). Substantial water diversions, particularly during dry water years, can nearly dewater sections of rivers, creating barriers to Chinook salmon migration (e.g., Scott River), reducing the amount of available juvenile rearing habitat, and contributing to poor water quality. The Klamath River is impaired by a variety of water quality problems, including temperature, dissolved oxygen, nutrients, organic matter, and microcystin (NCRWQCB 2010), all of which can adversely impact Chinook salmon.

Historical and ongoing timber harvest activities in the UKTR ESU have reduced habitat quality for Chinook salmon (Moyle 2002). Timber harvest can result in the loss of riparian vegetation, increased stream sedimentation, warmer water temperatures, reduced availability of large woody debris, increased peak runoff events, and simplified stream habitat, including filling of pools (Chamberlain *et al.,* 1991). Road systems used to access timber areas cause high rates of erosion, landslides and in some cases block access to habitat when poorly designed culverts are used in road-stream crossings (Chamberlain *et al.,* 1991). While mining in the UKTR ESU has been significantly curtailed in the past several decades, some lingering effects from tailings piles and other disturbances remain. Currently, there is a moratorium on suction dredge gold mining in California, which limits the impact of this activity on UKTR Chinook salmon habitat. The impacts to UKTR Chinook salmon from land management activities that were identified in Myers *et al.* (1998) and NMFS' 1998 listing determination for this ESU (63 FR 11482; March 9, 1998) continue today, with a few exceptions as noted above. Chinook salmon in the UKTR ESU have persisted for several decades at relatively stable levels of abundance, despite the existence of these threats to freshwater habitat, and, therefore, it is unlikely that destruction or modification of habitat or curtailment of the species' range will threaten its continued existence now or in the foreseeable future.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

UKTR Chinook salmon are harvested in commercial and recreational fisheries in the ocean as well as Tribal and recreational fisheries in the Klamath Basin. Ocean harvest of Klamath Basin fall-run Chinook salmon is coordinated by the Pacific Fishery Management Council (PFMC), Tribal harvest is managed by the individual tribes in the Klamath Basin, and in-river recreational fisheries are managed by the California Fish and Game Commission. From the mid-1980s through 2011, the PFMC managed the Klamath Basin fall-run Chinook salmon fishery with twin conservation objectives aimed at not surpassing a maximum total exploitation rate of 67 percent of projected returning natural adult spawners and achieving a minimum of at least 35,000 natural area adult spawners, with occasional allowances for smaller harvests when projected

returns were less than 35,000 adults (i.e., *de minimis* fisheries; PFMC 2011). The PFMC Salmon Fishery Management Plan was amended in 2011 and, beginning in 2012, the maximum allowable exploitation rate will be 68 percent of projected natural area adult spawners, subject to a minimum escapement of 40,700 natural area adult spawners, with allowances for *de minimis* fisheries when the stock is at low abundance (PFMC and NMFS 2011). The minimum natural area spawner escapement of 40,700 adults is the best estimate of an escapement level that will produce maximum sustainable yield (Salmon Technical Team 2005). Fisheries have very rarely resulted in exploitation rates meeting or exceeding the maximum allowable level of 67 percent and the observed total exploitation rate on Klamath Basin fall-run Chinook salmon has varied between approximately 20 and 65 percent since the late 1990s (Williams *et al.,* 2011).

Ocean exploitation rates for Klamath Basin spring-run Chinook salmon are not available (Williams *et al.,* 2011). However, restrictions on ocean fisheries that have been implemented as a result of the status of Klamath Basin fall-run Chinook salmon, Sacramento River fall-run Chinook salmon, and ESA listed salmon stocks also protect UKTR spring-run Chinook salmon, given the general overlap in the ocean distribution of these other stocks and UKTR spring-run Chinook salmon (Williams *et al.,* 2011). In their final year of life, fall-run Chinook salmon leave the ocean and return to the river for spawning later in the year than do spring-run Chinook salmon. As a consequence, fall-run fish are exposed to the summer ocean fishery in their final year of life, whereas spring-run are not. Thus, the ocean exploitation rate on Klamath Basin spring-run Chinook salmon is considered to be lower than on Klamath Basin fall-run Chinook salmon, because of their lack of exposure to the summer ocean fishery in their final year of life.

In-river recreational fishery exploitation rates in the Klamath Basin for spring-run Chinook salmon are unknown. Williams *et al.* (2011) indicated that in-river Tribal exploitation rates in recent years have generally been comparable to or slightly greater than those reported by Myers *et al.* (1998), particularly for spring-run Chinook salmon. To reduce impacts on spring-run adult escapement, the Yurok Tribe has enacted voluntary conservation measures since the early 1990s. The most recent example is the closure of the gillnet fishery three days per week and the prohibition of commercial fishing during the 2011 spring-run Chinook salmon migration period. Overall, impacts from commercial, recreational, and Tribal harvest do not appear to have changed significantly since they were last reviewed in 1998 (Myers *et al.,* 1998).

Because of the relatively robust regulatory controls on the harvest and other uses of Chinook salmon in the UKTR ESU and the reductions in overall harvest from historic levels, overutilization of Chinook salmon in this ESU for commercial, recreational or scientific purposes is unlikely to threaten the ESU's continued existence now or in the foreseeable future.

Disease or Predation

Diseases that cause mortality to UKTR Chinook salmon adults and juveniles are prevalent in the Klamath Basin, particularly in the mainstem Klamath River. In the fall of 2002, over 30,000 fall-run Chinook salmon died in the Klamath River as a result of low water discharge, large run size, high water temperatures, and an epizootic outbreak of the bacterium *Flavobacterium columnare* (columnaris) and the parasite *Ichthyopthirius multifilis* (ich) (CDFG 2004). Since that event, there have been substantial efforts to reduce the likelihood that such events will occur in the future or to minimize the impacts of any future event (CDFG 2011). An interagency task force has been organized to provide early warning and response to a potential fish kill that would entail requesting water releases from either Iron Gate or Lewiston dams if Klamath River flows fall below a specified minimum threshold during the adult fall-run Chinook salmon migration period.

An area of high parasite infections exists in the upper Klamath River from its confluence with the Shasta River downstream to the Seiad Valley (Foote *et al.,* 2011). Infection by *Ceratomyxa shasta* can be a significant mortality factor for juvenile Chinook salmon; the average infection rate for fish in the Klamath River upstream from its confluence with the Trinity River was 30 percent from 2004–2008, and 54 percent in 2009 (True *et al.,* 2011). Because high water temperature is one of the primary drivers for disease infection rates (Foote *et al.,* 2011), increased water temperatures associated with drought, climate change, and human activities (e.g., water diversions) are predicted to increase disease rates in the future (Woodson *et al.,* 2011).

Naturally-produced Chinook salmon fry are preyed upon by hatchery steelhead in the upper Trinity River (Naman and Sharpe 2011). There is limited information on pinniped predation of Chinook salmon in the UKTR ESU, but one study from the Klamath River estuary in 1997 estimated that over 8 percent of the fall-run Chinook salmon escapement was consumed by pinnipeds (Hillemeier 1999).

Diseases are unlikely to threaten the ESU's continued existence now or in the foreseeable future, unless climate change in the basin causes a substantial increase in disease related mortality. However, the magnitude of any such effects is difficult to predict with any degree of certainty. Predation is unlikely to threaten the ESU's continued existence now or in the foreseeable future.

Inadequacy of Existing Regulatory Mechanisms

Forest practices, managed by the State and the Federal Government, have generally improved since 1998, although some practices do not adequately protect Chinook salmon or other salmonids. About 68 percent of the land within the UKTR ESU is managed by the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) under the Northwest Forest Plan (NWFP). The NWFP and its associated Aquatic Conservation Strategy (ACS), which was designed to protect salmon and steelhead habitat by maintaining and restoring ecosystem health at watershed and landscape scales, has improved the landscape through changes in timber harvesting and road maintenance and construction. A recent report assessing the overall effectiveness of the NWFP indicates that there have been positive changes in watershed condition scores throughout the range of the NWFP, with trends indicating small increases in vegetation scores (Lanigan *et al.,* 2011). While overall road density changed only slightly across the area of the NWFP, road densities remain high in some portions of the UKTR Chinook salmon ESU (e.g., South Fork Trinity River).

Since 1998, NMFS has actively engaged with the State Board of Forestry to facilitate improvements in California's state forest practice rules to improve aquatic habitat protection. The Board of Forestry has made some improvements to the rules. However, the current forest practice rules will continue to be considered inadequate for anadromous salmonids until the full suite of needed protections outlined by NMFS in public hearings and the Northern California steelhead listing (65 FR 36074; June 7, 2000) are adopted.

Enforcement of State fishery regulations and Tribal trust fishing rights is a challenge within the UKTR

ESU. The Yurok Tribe and Hoopa Valley Tribe have Federally reserved fishing rights, but the Federally reserved salmon and steelhead fishing rights of other Tribes have not been established. Under their Federally reserved rights, the Yurok Tribe and Hoopa Valley Tribe are entitled to a moderate living standard or 50 percent of the harvest of Klamath-Trinity Basin salmon. However, members of the Karuk Tribe are authorized to fish with traditional hand-held dip nets at their indigenous fishing site at Ishi Pishi Falls under State fishing regulations. Thus, the management of in-river harvest of salmonids is shared between Federal, Tribal, and State agencies and depends upon whether the Tribe has a Federally reserved fishing right or is harvesting salmon under State fishing regulations. Monitoring and enforcement of in-river harvest is hampered by the complexity of the regulations governing the in-river fishery. Although the extent to which illegal harvest is a problem is unclear, illegal harvest of UKTR Chinook salmon has been documented. For example, State law enforcement officers have confiscated gill nets and fishing rods in the New River watershed, even during periods when the river is closed to fishing (Leach 2012).

While some water diversions in the UKTR Chinook salmon ESU are well monitored, consumptive water use is often poorly or, in some cases, entirely undocumented. Groundwater withdrawals are not monitored or quantified and water master service is lacking in much of the UKTR Chinook salmon ESU. The effects of water utilization on UKTR Chinook salmon are not well understood, and few studies have been developed to quantify the effects.

Current regulatory mechanisms are not quantifying or addressing consumptive water use, land clearing, chemical spills, and fertilizer and pesticide use associated with outdoor cannabis cultivation in the UKTR ESU.

There is no comprehensive drought plan for the Klamath Basin (including the Trinity River) or coordinated strategy that directs actions of resource management agencies to reduce the effects of drought or climate change on Chinook salmon. However, parties to the Klamath Basin Restoration Agreement have drafted a Drought Plan which, if finalized and implemented, is expected to reduce the effects of drought on UKTR Chinook salmon in the mainstem Klamath River. Without appropriate mechanisms in place to reduce the effects of drought or climate change throughout the UKTR ESU, both remain threats to the ESU.

Though there are examples of existing regulatory mechanisms not adequately protecting Chinook salmon in the UKTR ESU, Chinook salmon populations in the ESU have persisted at current levels for several decades despite these limitations. Overall, we conclude that it is unlikely that inadequacies in these regulatory mechanisms threaten the continued existence of the ESU.

Other Natural or Man-made Factors Affecting Its Continued Existence

Natural events like prolonged drought or catastrophic flooding could pose significant threats to UKTR Chinook salmon. Prolonged drought (more than two years) would magnify already challenging water quality, disease, and freshwater habitat conditions for UKTR Chinook salmon. A decadal scale drought, such as the one that lasted from the late 1920s until the late 1930s (McCabe *et al.,* 2004), would adversely affect several generations of Chinook salmon and increase the population's extinction risk. Although many shorter term droughts (two to three years) have occurred in the recent past, a decadal scale drought has occurred once in approximately the past 100 years.

Catastrophic flooding events like those in 1955, 1964 and 1997 in the Klamath Basin destroyed a large area of salmonid habitat, the effects of which are still presently evident (Cover *et al.,* 2010). In addition to adverse impacts to the spawning and rearing of Chinook salmon during flood events, such events also degrade habitat conditions by filling in holding pools, changing channel hydraulics, reducing the amount of large woody debris, and increasing summer stream temperatures through loss of riparian vegetation (Lisle 1982). While improvements to watershed conditions have been made which could help reduce the intensity of debris flows and sedimentation, catastrophic flooding poses a risk to UKTR Chinook salmon, though the timing and frequency of such events are difficult to predict.

Climate change projections for the Klamath Basin predict greater relative warming in the summer than in other seasons, drier summers, less snowpack, lower stream flow, and changes in predominant vegetation types such that wildfires are projected to increase in frequency and area (Woodson *et al.,* 2011). These predicted changes would impact UKTR Chinook salmon by altering fish migration and timing, decreasing the availability of side channel and floodplain habitats, the loss of cool-water refuge areas, higher rates of disease incidence, lower dissolved oxygen levels, and potentially earlier, longer, and more intense algae blooms (Woodson *et al.,* 2011). Climate change will likely exacerbate existing stressors as well as create new stressors for salmonids in the Klamath River (Quiñones 2011). A transition to a warmer climate state and sea surface warming may be accompanied by reductions in ocean productivity, which affects Chinook salmon survival (Behrenfeld *et al.,* 2006).

Iron Gate Hatchery and Trinity River Hatchery release roughly 14.2 million hatchery salmonids into the UKTR basin annually, of which 10.3 million are Chinook salmon that we have determined are part of this ESU. Releases of hatchery fish can create a host of ecological (Kostow 2009) and genetic (Reisenbichler and Rubin, 1999; Araki *et al.,* 2009) problems that can result in lower productivity of natural-origin salmonids (Buhle *et al.,* 2009; Chilcote *et al.,* 2011). Genetic information and escapement estimates indicate straying of hatchery Chinook salmon adults into tributaries is more acute for those streams or areas located closest to the two hatcheries in the Klamath Basin (Williams *et al.,* 2011). The extent to which hatchery-origin fish affect the productivity of UKTR Chinook salmon is unknown, but given research on the effect of hatchery fish on the productivity of natural-origin fish in other systems (Buhle *et al.,* 2009; Chilcote *et al.,* 2011), it is likely that productivity of UKTR Chinook salmon is impacted at least in those areas near hatcheries where hatchery-origin fish are most abundant.

Floods and droughts are natural phenomena that have affected UKTR Chinook salmon for millennia. Although these natural phenomena temporarily reduce the ability of freshwater habitat to support UKTR Chinook salmon, they are unlikely to threaten the continued existence of the species. Climate change has the potential to threaten the ESU's continued existence, particularly if precipitation and snowpack markedly decrease and temperatures substantially increase. However, the magnitude of climate driven changes in precipitation and snowpack in the foreseeable future and the response of Chinook salmon populations in the ESU to any such changes is unknown. Efforts to reform hatchery practices at Trinity River and Iron Gate hatcheries are increasing, in part driven by the recent scientific review of hatchery operations by the California Hatchery Scientific Review Group. If changes in hatchery operations resulting from this process are implemented in the future, they are expected to reduce the potential adverse effects of hatchery releases on the

productivity of naturally spawning Chinook salmon in this ESU.

Conservation Efforts

When considering the listing of a species, section 4(b)(1)(A) of the ESA (16 U.S.C. 1533(b)(1)(A)) requires consideration of efforts by any State, foreign nation, or political subdivision of a State or foreign nation to protect the species. On March 28, 2003, NMFS and the USFWS published the final Policy for Evaluating Conservation Efforts When Making Listing Decisions (68 FR 15100), that provides guidance on evaluating current protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, State and local governments, Tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or that have been implemented but have not yet demonstrated effectiveness.

There is a wide range of conservation efforts focused on salmonids, including Chinook salmon, in the UKTR ESU. One important effort is the Trinity River Restoration Program. This ongoing program established restoration goals for spring-run and fall-run Chinook salmon, identified actions that must be taken to restore Trinity River Chinook salmon populations, established quantifiable performance measures, and incorporated the principles of adaptive management (TRRP 2012). Removing Iron Gate Dam and three other dams upstream of Iron Gate Dam on the Klamath River (if the Secretary of the Interior makes an affirmative determination under the Klamath Hydroelectric Settlement Agreement) or adding fish passage facilities around these and other upper basin dams on the Klamath River (if the Secretary of the Interior does not make an affirmative determination under the Klamath Hydroelectric Settlement Agreement) and associated restoration efforts will likely improve the viability of UKTR Chinook salmon (CDFG and DOI 2011), but there are uncertainties regarding which of these efforts will be implemented. Several other efforts are ongoing in the Klamath Basin; in particular, improved forest practices, land management, and purchase of private land for conservation. Ongoing research on diseases that afflict UKTR Chinook salmon is expected to provide greater understanding of the factors that contribute to disease infection and management efforts that can ameliorate disease impacts in the UKTR ESU.

12-Month Finding

We have reviewed the status of the UKTR Chinook salmon ESU and considered the best scientific and commercial data available, and we conclude that the petitioned action is not warranted. In reaching this conclusion, we conclude that spring-run and fall-run Chinook salmon in the UKTR Basin constitute a single ESU. We have considered the conservation efforts for the ESU. In addition, we have considered the ESA section 4(a)(1) (16 U.S.C. 1533(a)(1)) factors in the context of the biological status of the species, the assessment of the risks posed by those threats, the possible cumulative impacts, and the associated uncertainties. Despite the issues discussed under those factors, consistent with the 1998 status review and listing determination for the UKTR Chinook salmon ESU, and based on a comprehensive review of the best scientific and commercial data currently available, NMFS concludes the overall extinction risk of the ESU is considered to be low over the next 100 years.

Based on these considerations and others described in this notice, we conclude that the UKTR Chinook salmon ESU is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so in the foreseeable future. Therefore, the UKTR Chinook salmon ESU does not meet the ESA definition of an endangered or threatened species, and listing the UKTR Chinook salmon ESU under the ESA is not warranted at this time.

References

A complete list of references cited herein is available upon request (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 27, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–7879 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BB77

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Salmon

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

ACTION: Notice of availability of fishery management plan amendments; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendments 10, 11, and 12 to the Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska (FMP) to NMFS for review. If approved, Amendment 10 would provide authority for NMFS to recover the administrative costs of processing applications for any future permits that may be required under this FMP, except for exempted fishing permits and prohibited species donation permits. If approved, Amendment 11 would revise the timeline associated with the Council's process to identify Habitat Areas of Particular Concern so that the process coincides with the Essential Fish Habitat (EFH) 5-year review, revise habitat research priority objectives, and update EFH conservation recommendations for, and the analysis of the impacts of, non-fishing activities. If approved, Amendment 12 would comprehensively revise and update the FMP to reflect the Council's salmon management policy and Federal law. Amendments 10, 11, and 12 are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Written comments on the amendment must be received on or before 5 p.m., Alaska local time, on June 1, 2012.

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0295, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0295 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 that line.

• *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

• *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

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 to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter 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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the proposed Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska that incorporates Amendments 10, 11, and 12, and the draft Environmental Assessment/Regulatory Impact Review prepared for Amendment 12 may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan or fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

This notice announces that proposed Amendments 10, 11, and 12 to the FMP are available for public review and comment. The salmon fisheries in the exclusive economic zone (EEZ, 3 to 200 nautical miles) off Alaska are managed under the FMP. The FMP was prepared by the Council under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The following paragraphs provide information on Amendments 10, 11, and 12. Because Amendment 12 would comprehensively amend the FMP and incorporates FMP language for Amendments 10 and 11, it is described first in this NOA. Descriptions of Amendments 10 and 11 follow the description of Amendment 12.

Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska

The FMP originally was approved in 1979 and last comprehensively revised in 1990. The FMP conserves and manages the Pacific salmon commercial and sport fisheries that occur in the EEZ off Alaska. The FMP establishes two management areas: the East Area is the EEZ in the Gulf of Alaska east of Cape Suckling (143°53.6″ West Longitude) and the West Area is the EEZ off the coast of Alaska west of Cape Suckling. The FMP manages commercial salmon fisheries differently in each area. In the East Area, the FMP delegates management of the commercial troll salmon fishery to the State of Alaska (State) to manage in compliance with the Pacific Salmon Treaty, Magnuson-Stevens Act, and FMP. The FMP prohibits commercial salmon fishing with net gear in the East Area. In the West Area, the FMP prohibits commercial salmon fishing, except for commercial salmon fishing with net gear in three defined areas of the EEZ adjacent to Cook Inlet, Prince William Sound, and the Alaska Peninsula. The FMP delegates management of the sport fishery to the State in both areas.

Although the FMP has been amended nine times in the last two decades, no comprehensive consideration of management strategy or scope of Federal management has occurred since 1990. State fisheries regulations and Federal and international laws affecting Alaska salmon have changed since 1990, and the reauthorized Magnuson-Stevens Act expanded the requirements for FMPs. Additionally, the current FMP is vague with respect to management authority for commercial salmon fishing in the three defined areas that occur in the West Area.

Therefore, the Council determined that the FMP must be updated, in order to comply with the current Magnuson-Stevens Act requirements, and amended, to more clearly reflect the Council's policy with regard to the State's continued management authority over commercial fisheries in the West Area, the Southeast Alaska commercial troll fishery, and the sport fishery.

Amendment 12

In December 2011, the Council voted unanimously to recommend Amendment 12 to the FMP. The Council considered revisions to the FMP at five separate meetings that occurred over more than a year. At each regularly scheduled and noticed public meeting, the Council took public testimony and considered written and oral public comments, providing stakeholders with opportunities for involvement on this issue. Additionally, the Council conducted a special open workshop for stakeholders in September 2011, which was attended by more than 20 members of the public, three Council members, Council staff, and State and Federal agency staff. The Council considered the comments and suggestions made during that workshop in developing Amendment 12.

Amendment 12 would comprehensively revise the FMP to reflect the Council's salmon management policy, which is to facilitate State of Alaska salmon management in accordance with the Magnuson-Stevens Act, Pacific Salmon Treaty, and applicable Federal law. Under this policy, the Council identified six management objectives to guide salmon management under the FMP and achieve the management policy: (1) Prevent overfishing and achieve optimum yield, (2) manage salmon as a unit throughout their range, (3) minimize bycatch and bycatch mortality, (4) maximize economic and social benefits to the Nation over time, (5) protect wild stocks and fully utilize hatchery production, and (6) promote safety. The Council, NMFS, and the State of Alaska will consider these management objectives in developing FMP amendments and associated management measures.

To reflect the Council's policy and objectives, Amendment 12 would redefine the FMP's management area to

exclude the Cook Inlet, Prince William Sound, and the Alaska Peninsula net fishing areas and the sport fishery from the West Area. In removing these three areas and the sport fishery from the FMP, the Council provided a rationale for why Federal conservation and management are not necessary, consistent with the Magnuson-Stevens Act. The Council recognized that FMP management would only apply to the portion of the fisheries in the EEZ, and that salmon are more appropriately managed as a unit in consideration of all fishery removals to meet in-river escapement goals. The Council determined that excluding these areas and the sport fishery from the West Area and the FMP would allow the State to manage Alaska salmon stocks as seamlessly as practicable throughout their range, rather than imposing dual State and Federal management. Under Amendment 12, the FMP would continue to apply to the vast majority of the EEZ west of Cape Suckling and would maintain the prohibition on commercial salmon fishing in the redefined West Area.

In the East Area, Amendment 12 would maintain the current scope of the FMP and would reaffirm that management of the commercial and sport salmon fisheries in the East Area is delegated to the State. The FMP relies on a combination of State management and management under the Pacific Salmon Treaty to ensure that salmon stocks, including trans-boundary stocks, are managed as a unit throughout their ranges and interrelated stocks are managed in close coordination. Maintaining the FMP in the East Area would leave existing management structures in place, recognizing that the FMP is the nexus for the application of the Pacific Salmon Treaty and other applicable Federal law.

The Council also recommended a number of FMP provisions to update the FMP and bring it into compliance with the Magnuson-Stevens Act and other applicable Federal law. Amendment 12 would include these changes in a reorganized FMP with a more concise title, ''Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska.''

The primary new FMP provision is a mechanism to establish annual catch limits (ACLs) and accountability measures (AMs) for the salmon stocks caught in the East Area commercial troll fishery, the only commercial fishery authorized under the FMP. Amendment 12 would not establish ACLs or AMs in the West Area because no commercial salmon fisheries are authorized in the West Area. The mechanism to establish ACLs and AMs for the commercial troll fishery builds on the FMP's existing framework for establishing status determination criteria. The commercial troll fishery harvests primarily Chinook and coho salmon; though chum, sockeye, and pink salmon are also harvested occasionally. The FMP currently separates these salmon stocks into three tiers for the purposes of status determination criteria.

Tier 1 stocks are Chinook salmon stocks covered by the Pacific Salmon Treaty. Amendment 12 would not establish a mechanism for specifying ACLs and AMs for Chinook salmon because the Magnuson-Stevens Act exempts stocks managed under an international fisheries agreement in which the United States participates from the ACL requirement (16 U.S.C. 1853 note).

Under Amendment 12, the mechanisms for specifying ACLs for Tier 2 (coho salmon) and Tier 3 (coho, pink, chum, and sockeye salmon stocks managed as mixed-species complexes) salmon stocks would be established using the State's scientifically-based management measures to control catch and prevent overfishing. This approach represents an alternative approach to the methods prescribed in NMFS's National Standard 1 Guidelines (50 CFR 600.310) for specifying ACLs. The National Standard 1 Guidelines contemplate limited circumstances where the standard approaches to specification of reference points, including ACLs, and management measures detailed in the guidelines may not be appropriate. The National Standard 1 Guidelines specifically cite Pacific salmon as an example of stocks that may require an alternative approach. Under this flexibility within the guidelines, the Council may propose an alternative approach for satisfying the requirements of National Standard 1, other than those set forth in the guidelines. The guidelines require that the Council document its rationale for proposing an alternative approach in an FMP amendment and document its consistency with the Magnuson-Stevens Act. Amendment 12 would modify the FMP to include the rationale for this alternative approach as the mechanism for specifying ACLs.

The Council proposes an alternative approach because the State's escapement-based management system is a more effective management system for preventing overfishing of Alaska salmon than a system that places rigid numeric limits on the number of fish that may be caught. Escapement is defined as the annual estimated size of the spawning salmon stock in a given river, stream, or watershed. Given salmon's particular life history attributes, the Council's preferred method to annually ensure that surviving spawners will maximize present and future yields is a system that establishes escapement goals intended to maximize surplus productivity of future runs, estimates run strength in advance, monitors actual run strength and escapement during the fishery, and utilizes in-season management measures, including fishery closures, to ensure that minimum escapement goals are achieved. Further, escapement-based management, with real-time monitoring of run strength, inherently accounts for total catch and all sources of natural mortality. As part of the alternative approach the Council recommends that Amendment 12 establish a peer review process in the FMP that utilizes the State's existing salmon expertise and processes for developing escapement goals as fishing level recommendations.

The State's escapement-based management system includes the added features of in-season monitoring to confirm actual run strength and in-season management measures that adjust fishing pressure, or close a fishery, to ensure that escapement goals are met if pre-season predictions of run strength prove inaccurate. Under Amendment 12, these features would be the AMs to prevent ACLs from being exceeded and to correct overages of the ACL if they do occur.

Amendment 12 also would revise the definition of optimum yield. For the East Area, several economic, social, and ecological factors are involved in the definition of OY. For Chinook salmon stocks in Tier 1, an all-gear maximum sustainable yield (MSY) is prescribed in terms of catch by the Pacific Salmon Treaty and takes into account the biological productivity of Chinook salmon and ecological factors in setting this limit. Under Amendment 12, the portion of the all-gear catch limit allocated to troll gear would represent the OY for that fishery and takes into account the economic and social factors considered by the State of Alaska in making allocation decisions. For stocks in Tiers 2 and 3, MSY currently is defined in terms of escapement. MSY escapement goals account for biological productivity and ecological factors, including the consumption of salmon by a variety of marine predators. Under Amendment 12, the OY for the troll fishery would be that fishery's annual catch, which, when combined with the catch from all other salmon fisheries, results in a post-harvest run size equal to the MSY escapement goal for each

indicator stock. The portion of the annual catch harvested by the troll fishery reflects the biological, economic, and social factors considered by the State of Alaska in determining when to open and close the coho salmon harvest by the troll fishery.

For the redefined West Area under Amendment 12, commercial fishing is prohibited; therefore the directed harvest OY would be zero. The redefined West Area has been closed to commercial net fishing since 1952 and commercial troll fishing since 1973 and there has not been any commercial yield from this area. This proposed OY recognizes that salmon are fully utilized by state-managed fisheries and that the State manages fisheries based on the best available information using the State's escapement goal management system. This OY also recognizes that non-Alaska salmon are fully utilized and managed by their respective management authorities when they return to their natal regions.

Amendment 12 would add a fishery impact statement to the FMP that includes fishery information required by the Magnuson-Stevens Act (16 U.S.C. 1853(a)(2), (3), (5), (9), (11), and (13)). The fishery impact statement contained in Amendment 12 analyzes the effects of the conservation and management measures on participants in the fisheries, fishing communities affected by the FMP, and safety of human life at sea. The fishery impact statement also describes the salmon fishery, specifies the present and probable future condition of the fishery, and describes the commercial, recreational, and charter fishing sectors which participate in the salmon fishery. Additionally, the fishery impact statement assesses the economic impacts of the salmon fishery by sector.

Amendment 12 also would revise the current FMP process for Federal review of State management measures to more fully describe the process and bring the process into compliance with Magnuson-Stevens Act requirements (16 U.S.C. 1856(a)(3)(B)). With the delegation of management authority of the East Area commercial troll salmon fishery and the East Area sport fishery to the State of Alaska, the Council and NMFS must stay apprised of State management measures governing commercial and sport salmon fishing in the East Area and, if necessary, review those measures for consistency with the FMP, the Magnuson-Stevens Act, and other applicable Federal law. Also, members of the public may request that the Secretary review State salmon management measures in the East Area for consistency with the FMP, the Magnuson-Stevens Act and other applicable Federal law. Under Amendment 12, the FMP would describe (1) how the Council and NMFS fulfill this oversight role, (2) the ways in which the Council and NMFS will monitor State management measures that regulate salmon fishing in the East Area, (3) the process by which NMFS will review State management measures governing salmon fisheries in the East Area for consistency with the FMP, the Magnuson-Stevens Act, and other applicable Federal law, (4) the process by which a member of the public can petition NMFS to review State management measures in the East Area for consistency with the FMP, the Magnuson-Stevens Act, and other applicable Federal law, and (5) the process NMFS will follow if NMFS determines that State management measures in the East Area are inconsistent with the FMP, the Magnuson-Stevens Act, or other applicable Federal laws.

Amendment 12 would remove existing FMP language governing the issuance of Federal salmon permits. The Council recommended removing FMP language related to Federal salmon permits because Federal permits are no longer necessary. All current participants have State of Alaska limited entry permits. According to language included in the original 1979 FMP, provisions for Federal salmon permits were established as a complement to the State limited entry permit, in order to limit capacity in the EEZ so that persons who did not receive a State limited entry permit would not simply shift their fishing efforts into Federal waters. Additionally, the 1979 FMP explains that there was an interest in ensuring that the few vessels that had fished in the EEZ but not landed their catch in Alaska could continue to have access to the EEZ, even if they were not eligible for a state limited entry permit. The problems identified in the 1979 FMP were addressed by this Federal permit system. In 1979 or 1980, NMFS issued 2 non-transferrable limited entry permits and these permits are no longer active in the fishery.

An Environmental Assessment/Regulatory Impact Review was prepared for Amendment 12 that describes the management background, the purpose and need for action, the management alternatives, and the environmental, social, and economic impacts of the alternatives (see **ADDRESSES**). Additional details on the basis of specific policy and management measures are provided in the analysis.

Amendment 10

In October 2009, the Council adopted a motion to revise all six of its fishery management plans to provide authority for recovering the administrative costs of processing applications for permits required under those plans, except for exempted fishing permits and prohibited species donation permits. Amendment 10 would amend the FMP to provide authority for NMFS to recover the administrative costs of processing applications for any future permits that may be required under this FMP, except for exempted fishing permits and prohibited species donation permits. Amendment 10 would implement the following FMP language: ''NMFS may assess and collect fees to recover the administrative costs incurred by the Federal government in processing applications for permits required to participate in the fisheries managed under this FMP as authorized by the Magnuson-Stevens Act, 16 U.S.C 1853(b).'' If Amendments 10 and 12 are approved by NMFS, this language would be included at section 4.2 of the FMP. If Amendment 10 is approved but Amendment 12 is not, then this language would be included at section 5.2 of the FMP.

Amendment 11

In April 2011, the Council recommended Amendment 11 to (1) revise the timeline associated with the Council's process to identify Habitat Areas of Particular Concern so that the process coincides with the EFH 5-year review, (2) revise habitat research priority objectives, and (3) update EFH conservation recommendations for, and the analysis of the impacts of, non-fishing activities. If Amendments 11 and 12 are approved by NMFS, Amendment 11 would to include the most recent scientific information resulting from the 5-year review in chapter 7 of the FMP and the FMP's Appendix A ''Essential Fish Habitat and Habitat Areas of Particular Concern''. If Amendment 11 is approved but Amendment 12 is not, then this language would be included in section 6.3 of the FMP and in the FMP's Appendix E. These changes are necessary to update the FMP based upon the best scientific information available and the guidelines articulated in the final rule to implement the EFH provisions of the Magnuson-Stevens Act (see 50 CFR part 600, subpart J).

NMFS is soliciting public comments on proposed Amendments 10, 11, and 12 through the end of the comment period (see **DATES**). NMFS will consider all comments received by the end of the comment period on Amendments 10,

11, and 12, in the FMP approval/disapproval decision. To be considered, comments must be received, not just postmarked or otherwise transmitted, by 5 p.m. Alaska local time on the last day of the comment period. Comments received after that date will not be considered in the approval/disapproval decision on the amendment.

NMFS intends to publish in the **Federal Register** a proposed rule that would implement Amendment 12 and seek public comment on that proposed rule, following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period for Amendment 12 to be considered in the approval/disapproval decision on Amendment 12. Implementing regulations are not needed for either Amendment 10 or Amendment 11, and therefore no proposed rule for these amendments will be published.

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

Dated: March 28, 2012.

Carrie Selberg,

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

[FR Doc. 2012–7854 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 63

Monday, April 2, 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 COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Advance Monthly Retail Trade Survey

AGENCY: U.S. Census Bureau, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 1, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 482–0336, (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Karla Allen, U.S. Census Bureau, SSSD HQ–8K183A, 4600 Silver Hill Road, Washington, DC 20233–6500, (301) 763–7208 (or via the Internet at *Karla.l.Allen@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Advance Monthly Retail Trade Survey (MARTS) provides an early indication of monthly sales for firms located in the United States and classified in the Retail Trade or Food Services sectors as defined by the North American Industry Classification System (NAICS).

The MARTS sample is comprised of approximately 5,000 firms selected from the larger Monthly Retail Trade Survey sample of about 12,000 firms (OMB Control Number: 0607–0717). Firms are selected into the MARTS sample using a stratified design where the strata are defined by industry and size. The MARTS sample is re-selected, generally at 2½ to 3 year intervals, to ensure it is representative of the target population.

The survey requests sales and e-commerce sales for the month just ending. If reporting data for a period other than the calendar month, the survey asks for the period's length (4 or 5 weeks) and date on which the period ended. The survey also asks for the number of establishments covered by the data provided and whether or not the sales data provided are estimates or more accurate ''book'' figures.

Survey results are available approximately 9 working days after the end of the reference month. The Bureau of Economic Analysis (BEA) uses the survey results as critical inputs to the calculation of the Gross Domestic Product (GDP). Policymakers such as the Federal Reserve Board (FRB) need to have the timeliest estimates in order to anticipate economic trends and act accordingly. The Council of Economic Advisors (CEA) and other government agencies and businesses use the survey results to formulate and make decisions about economic policy. These estimates have a high priority because of their timeliness. There would be approximately a one-month delay in the availability of these results if the survey were not conducted.

II. Method of Collection

We will collect this information by mail, fax, telephone follow-up, and Internet (during the second half of 2012).

III. Data

OMB Control Number: 0607–0104.

Form Number: SM–44(06)A, SM–44(06)AE, SM–44(06)AS, and SM–72(06)A.

Type of Review: Regular Submission.

Affected Public: Retail and Food Services firms in the United States.

Estimated Number of Respondents: 5,000.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 5,000.

Estimated Total Annual Cost: The cost to the respondents for the fiscal year 2012 is estimated to be $165,750.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 27, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–7736 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Marc Knapp, Inmate #—06450–015, FCI Safford, P.O. Box 9000, Safford, AZ 85548; Order Denying Export Privileges

On September 13, 2011, in the U.S. District Court, District of Delaware, Marc Knapp, (''Knapp'') was convicted of one count of violating the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)) (''IEEPA'') and one count of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''). Specifically, Knapp pled guilty to: knowingly and willfully attempting to export from the United States to the Islamic Republic of Iran;

causing the attempted export to the Islamic Republic of Iran; and causing the attempted supply to the Islamic Republic of Iran, of an F–5B Tiger II fighter jet and other defense articles without obtaining the required authorization from the Office of Foreign Assets Control, Department of the Treasury, in violation of IEEPA. Knapp also pled guilty to knowingly and willfully attempting to export from the United States to the Islamic Republic of Iran, and causing the attempted export to the Islamic Republic of Iran, of an F–5B Tiger II fighter jet and other defense articles, which are designated as a defense articles on the United States Munitions List, without having first obtained from the Department of State a license for such exports or written authorization for such exports, in violation of the AECA. Knapp was sentenced to 46 months imprisonment and ordered to serve three years of supervised release.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the [Export Administration Act (''EAA'')], the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Knapp's conviction for violating IEEPA and AECA, and have provided notice and an opportunity for Knapp to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Knapp. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Knapp's export privileges under the Regulations for a period of ten years from the date of Knapp's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Knapp had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. Until September 13, 2021, Marc Knapp, with the last known address at:

Inmate #—06450–015, FCI Safford, P.O. Box 9000, Safford, AZ 85548, and when acting for or on behalf of Knapp, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Knapp by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until September 13, 2021.

VI. In accordance with Part 756 of the Regulations, Knapp may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Knapp. This Order shall be published in the **Federal Register**.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2011). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 Fed. Reg. 50661 (August 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)).

Issued this 27th day of March, 2012.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2012–7803 Filed 3–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–838, A–533–840, A–549–822]

Certain Frozen Warmwater Shrimp from Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews and Request for Revocation of Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) received timely requests to conduct administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp (shrimp) from Brazil, India, and Thailand. The anniversary month of these orders is February. In accordance with 19 CFR 351.221, we are initiating these administrative reviews. The Department received a request to revoke one antidumping duty order in part.

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929 (Brazil), Henry Almond at (202) 482–0049 (India), and Holly Phelps at (202) 482–0656 (Thailand), AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

Background

During the anniversary month of February 2012, the Department received timely requests for administrative reviews of the antidumping duty orders on shrimp from Brazil, India, and Thailand from the Ad Hoc Shrimp Trade Action Committee (hereinafter, Domestic Producers), the American Shrimp Processors Association (ASPA), and certain individual companies, in accordance with 19 CFR 351.213(b). The Department is now initiating administrative reviews of these orders covering multiple companies for Brazil, India, and Thailand, as noted in the ''Initiation of Reviews'' section of this notice. The Department also received a timely request to revoke in part the antidumping duty order on certain frozen warmwater shrimp from India with respect to three exporters.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (Act).

Respondent Selection

In the event the Department limits the number of respondents for individual examination in these administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of these reviews and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of these antidumping proceedings (*i.e.,* investigation, administrative review, or changed circumstances review) or in a proceeding under Section 129 of the Uruguay Round Agreements Act. For any company subject to these reviews, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Initiation of Reviews

In accordance with section 751(a)(1) of the Act, we are initiating administrative reviews of the antidumping duty orders on shrimp from Brazil, India and Thailand. We intend to issue the final results of these reviews by February 28, 2013.

	Period to be reviewed
Antidumping Duty Proceeding	
Brazil: Certain Frozen Warmwater Shrimp, A–351–838	2/1/11–1/31/12
Amazonas Industria Alimenticias S.A.	
Comissaria Eichenberg Ltda.	
New Symbol Comercio E Exportacao de Pescados Ltda.	
India: Certain Frozen Warmwater Shrimp, A–533–840	2/1/11–1/31/12
Abad Fisheries	
Accelerated Freeze-Drying Co.	
Adilakshmi Enterprises	
Allana Frozen Foods Pvt. Ltd.	
Allanasons Ltd.	
AMI Enterprises	
Amulya Seafoods	
Anand Aqua Exports	
Ananda Aqua Applications/Ananda Aqua Exports (P) Limited/Ananda Foods [1]	
Andaman Seafoods Pvt. Ltd. [2]	
Angelique Intl	
Anjaneya Seafoods	
Apex Exports [3]	
Arvi Import & Export	
Asvini Exports	
Asvini Fisheries Private Limited	
Avanti Feeds Limited	
Ayshwarya Seafood Private Limited	
Baby Marine Exports	
Baby Marine International	
Baby Marine Sarass	
Bhatsons Aquatic Products	
Bhavani Seafoods	
Bijaya Marine Products	
Blue Fin Frozen Foods Pvt. Ltd.	
Blue Water Foods & Exports P. Ltd.	
Bluefin Enterprises	
Bluepark Seafoods Private Ltd. [2]	
BMR Exports	
Britto Exports	
C P Aquaculture (India) Ltd.	
Calcutta Seafoods Pvt. Ltd.	
Capithan Exporting Co.	
Castlerock Fisheries Ltd.	
Chemmeens (Regd)	
Cherukattu Industries [2]	
Choice Canning Company	
Choice Trading Corporation Private Limited	
Coastal Corporation Ltd.	
Cochin Frozen Food Exports Pvt. Ltd.	
Coreline Exports	
Corlim Marine Exports Pvt. Ltd.	
Damco India Private	
Devi Fisheries Limited	
Devi Marine Food Exports Private Ltd./Kader Exports Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Pvt. Ltd./Liberty Oil Mills Ltd./Premier Marine Products/Universal Cold Storage Private Limited [4]	
Devi Sea Foods Limited [5]	
Diamond Seafood Exports/Edhayam Frozen Foods Pvt. Ltd./Kadalkanny Frozen Foods/Theva & Company [6]	
Digha Seafood Exports	
Esmario Export Enterprises	
Exporter Coreline Exports	
Falcon Marine Exports Limited/K.R. Enterprises [7]	
Five Star Marine Exports Private Limited	
Forstar Frozen Foods Pvt. Ltd.	
Frontline Exports Pvt. Ltd.	
G A Randerian Ltd.	
Gadre Marine Exports	
Galaxy Maritech Exports P. Ltd.	
Gayatri Seafoods	
Geo Aquatic Products (P) Ltd.	
Geo Seafoods	
Goodwill Enterprises	
Grandtrust Overseas (P) Ltd.	
GVR Exports Pvt. Ltd.	
Haripriya Marine Export Pvt. Ltd.	

	Period to be reviewed
Harmony Spices Pvt. Ltd.	
HIC ABF Special Foods Pvt. Ltd.	
Hindustan Lever, Ltd.	
Hiravata Ice & Cold Storage	
Hiravati Exports Pvt. Ltd.	
Hiravati International Pvt. Ltd. (located at APM—Mafco Yard, Sector—18, Vashi, Navi, Mumbai—400 705, India)	
Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	
IFB Agro Industries Ltd.	
Indian Aquatic Products	
Indo Aquatics	
Innovative Foods Limited	
International Freezefish Exports	
Interseas	
ITC Limited, International Business	
ITC Ltd.	
Jagadeesh Marine Exports	
Jaya Satya Marine Exports	
Jaya Satya Marine Exports Pvt. Ltd.	
Jayalakshmi Sea Foods Private Limited	
Jinny Marine Traders	
Jiya Packagings	
K R M Marine Exports Ltd.	
K.V. Marine Exp.	
Kalyan Aqua & Marine Exp. India Pvt. Ltd.	
Kalyanee Marine	
Kanch Ghar	
Kay Kay Exports [2]	
Kings Marine Products	
Koluthara Exports Ltd.	
Konark Aquatics & Exports Pvt. Ltd.	
Landauer Ltd.	
Libran Cold Storages (P) Ltd.	
Lighthouse Trade Links Pvt. Ltd.	
Magnum Estates Limited [3]	
Magnum Export	
Magnum Sea Foods Limited [3]	
Malabar Arabian Fisheries	
Malnad Exports Pvt. Ltd.	
Mangala Marine Exim India Pvt. Ltd.	
Mangala Sea Products [2]	
Meenaxi Fisheries Pvt Ltd.	
MSC Marine Exporters	
MSRDR Exports	
MTR Foods	
N.C. John & Sons (P) Ltd.	
Naga Hanuman Fish Packers	
Naik Frozen Foods [2]	
Naik Frozen Foods Pvt., Ltd. [2]	
Naik Seafoods Ltd. [2]	
Navayuga Exports	
Nekkanti Sea Foods Limited	
Nila Sea Foods Pvt. Ltd.	
Nine Up Frozen Foods	
Overseas Marine Export	
Paragon Sea Foods Pvt. Ltd.	
Parayil Food Products Pvt., Ltd.	
Penver Products (P) Ltd.	
Pesca Marine Products Pvt., Ltd.	
Pijikay International Exports P Ltd.	
Pisces Seafoods International	
Premier Exports International	
Premier Marine Foods	
Premier Seafoods Exim (P) Ltd.	
R V R Marine Products Private Limited [3]	
Raa Systems Pvt. Ltd.	
Raju Exports	
Ram's Assorted Cold Storage Ltd. [3]	
Raunaq Ice & Cold Storage	
Raysons Aquatics Pvt. Ltd.	
Razban Seafoods Ltd.	
RBT Exports	
RDR Exports	
Riviera Exports Pvt. Ltd.	

	Period to be reviewed
Rohi Marine Private Ltd.	
S & S Seafoods	
S Chanchala Combines	
S. A. Exports	
Safa Enterprises	
Sagar Foods	
Sagar Grandhi Exports Pvt. Ltd.	
Sagar Samrat Seafoods	
Sagarvihar Fisheries Pvt. Ltd. [2]	
SAI Marine Exports Pvt. Ltd. [3]	
SAI Sea Foods	
Sandhya Aqua Exports	
Sandhya Aqua Exports Pvt. Ltd. [3]	
Sandhya Marines Limited	
Santhi Fisheries & Exports Ltd.	
Sarveshwari Exp.	
Sarveshwari Ice & Cold Storage Pvt. Ltd	
Satya Seafoods Private Limited	
Sawant Food Products	
Seagold Overseas Pvt. Ltd.	
Selvam Exports Private Limited	
Sharat Industries Ltd.	
Shimpo Exports [2]	
Shimpo Exports Pvt. Ltd. [2]	
Shippers Exports	
Shiva Frozen Food Exp. Pvt., Ltd.	
Shree Datt Aquaculture Farms Pvt. Ltd.	
Shroff Processed Food & Cold Storage P Ltd.	
Silver Seafood	
Sita Marine Exports	
Sowmya Agri Marine Exports	
Sprint Exports Pvt. Ltd.	
Sri Chandrakantha Marine Exports	
Sri Sakkthi Cold Storage	
Sri Sakthi Marine Products P Ltd.	
Sri Satya Marine Exports	
Sri Venkata Padmavathi Marine Foods Pvt. Ltd.	
Srikanth International [8]	
SSF Ltd.	
Star Agro Marine Exports Private Limited	
Sun-Bio Technology Limited	
Suryamitra Exim (P) Ltd.	
Suvarna Rekha Exports Private Limited	
Suvarna Rekha Marines P Ltd.	
TBR Exports Pvt Ltd.	
Teekay Marine P. Ltd. [3]	
Tejaswani Enterprises	
The Waterbase Ltd. [2]	
Triveni Fisheries P Ltd.	
Uniroyal Marine Exports Ltd.	
Usha Seafoods	
V.S Exim Pvt Ltd.	
Veejay Impex	
Victoria Marine & Agro Exports Ltd.	
Vinner Marine	
Vishal Exports	
Wellcome Fisheries Limited	
West Coast Frozen Foods Private Limited	
Z A Sea Foods Pvt. Ltd.	
Thailand: Certain Frozen Warmwater Shrimp, A–549–822	2/1/11–1/31/12
A Foods 1991 Co., Ltd./May Ao Foods Co., Ltd. [9]	
A. Wattanachai Frozen Products Co., Ltd. [10]	
A.S. Intermarine Foods Co., Ltd.	
ACU Transport Co., Ltd.	
Anglo-Siam Seafoods Co., Ltd.	
Apex Maritime (Thailand) Co., Ltd.	
Apitoon Enterprise Industry Co., Ltd.	
Applied DB	
Asian Seafood Coldstorage (Sriracha)	
Asian Seafoods Coldstorage Public Co., Ltd./Asian Seafoods Coldstorage (Suratthani) Co./STC Foodpak Ltd. [10]	
Assoc. Commercial Systems	
B.S.A. Food Products Co., Ltd.	
Bangkok Dehydrated Marine Product Co., Ltd.	

	Period to be reviewed
C Y Frozen Food Co., Ltd.	
C.P. Retailing and Marketing Co., Ltd.	
Calsonic Kansei (Thailand) Co., Ltd.	
Century Industries Co., Ltd.	
Chaivaree Marine Products Co., Ltd.	
Chaiwarut Company Limited	
Charoen Pokphand Foods Public Company Limited [10]	
Chonburi LC	
Chue Eie Mong Eak Ltd. Part.	
Commonwealth Trading Co., Ltd.	
Core Seafood Processing Co., Ltd.	
CP Merchandising Co., Ltd. [10]	
Crystal Frozen Foods Co., Ltd. and/or Crystal Seafood	
Daedong (Thailand) Co. Ltd.	
Daiei Taigen (Thailand) Co., Ltd.	
Daiho (Thailand) Co., Ltd.	
Dynamic Intertransport Co., Ltd.	
Earth Food Manufacturing Co., Ltd.	
F.A.I.T. Corporation Limited	
Far East Cold Storage Co., Ltd.	
Findus (Thailand) Ltd.	
Fortune Frozen Foods (Thailand) Co., Ltd.	
Frozen Marine Products Co., Ltd.	
Gallant Ocean (Thailand) Co., Ltd.	
Gallant Seafoods Corporation	
Global Maharaja Co., Ltd.	
Golden Sea Frozen Foods Co., Ltd. [10]	
Golden Thai Imp. & Exp. Co., Ltd.	
Good Fortune Cold Storage Co. Ltd.	
Good Luck Product Co., Ltd.	
Grobest Frozen Foods Co., Ltd.	
GSE Lining Technology Co., Ltd.	
Gulf Coast Crab Intl.	
H.A.M. International Co., Ltd.	
Haitai Seafood Co., Ltd.	
Handy International (Thailand) Co., Ltd.	
Heng Seafood Limited Partnership	
Heritrade Co., Ltd.	
HIC (Thailand) Co., Ltd.	
High Way International Co., Ltd.	
I.T. Foods Industries Co., Ltd.	
Inter-Oceanic Resources Co., Ltd.	
Inter-Pacific Marine Products Co., Ltd.	
K & U Enterprise Co., Ltd.	
K Fresh	
K. D. Trading Co., Ltd.	
K.L. Cold Storage Co., Ltd.	
KF Foods Limited	
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd.	
Kibun Trdg	
Kingfisher Holdings Ltd.	
Kitchens of the Oceans (Thailand) Company, Limited [10]	
Klang Co., Ltd.	
Kongphop Frozen Foods Co., Ltd.	
Kosamut Frozen Foods Co., Ltd.	
Lee Heng Seafood Co., Ltd.	
Leo Transports	
Li-Thai Frozen Foods Co., Ltd.	
Lucky Union Foods Co., Ltd.	
Maersk Line	
Magnate & Syndicate Co., Ltd.	
Mahachai Food Processing Co., Ltd.	
Marine Gold Products Ltd.	
Merit Asia Foodstuff Co., Ltd.	
Merkur Co., Ltd.	
Ming Chao Ind Thailand	
N&N Foods Co., Ltd.	
NR Instant Produce Co., Ltd.	
Namprik Maesri Ltd. Part.	
Narong Seafood Co., Ltd.	
Nongmon SMJ Products	
Ongkorn Cold Storage Co., Ltd./Thai-Ger Marine Co., Ltd.	
Pacific Queen Co., Ltd.	

	Period to be reviewed
Pakfood Public Company Limited/Asia Pacific (Thailand) Co., Ltd./Chaophraya Cold Storage Co., Ltd./Okeanos Co., Ltd./Okeanos Food Co., Ltd./Takzin Samut Co., Ltd. [11]	
Penta Impex Co., Ltd.	
Pinwood Nineteen Ninety Nine	
Piti Seafood Co., Ltd.	
Premier Frozen Products Co., Ltd.	
Preserved Food Specialty Co., Ltd.	
Queen Marine Food Co., Ltd.	
Rayong Coldstorage (1987) Co., Ltd.	
S&D Marine Products Co., Ltd.	
S&P Aquarium	
S&P Syndicate Public Company Ltd.	
S. Chaivaree Cold Storage Co., Ltd.	
S. Khonkaen Food Industry Public Co., Ltd. and/or S. Khonkaen Food Ind. Public	
S.K. Foods (Thailand) Public Co. Limited	
Samui Foods Company Limited	
SB Inter Food Co., Ltd.	
SCT Co., Ltd.	
Sea Bonanza Food Co., Ltd.	
SEA NT'L CO., LTD.	
Seafoods Enterprise Co., Ltd.	
Seafresh Fisheries/Seafresh Industry Public Co., Ltd.	
Search & Serve	
Shianlin Bangkok Co., Ltd.	
Shing Fu Seaproducts Development Co.	
Siam Food Supply Co., Ltd.	
Siam Intersea Co., Ltd.	
Siam Marine Products Co. Ltd.	
Siam Ocean Frozen Foods Co. Ltd.	
Siamchai International Food Co., Ltd.	
Smile Heart Foods	
SMP Products, Co., Ltd. [10]	
Southport Seafood Co., Ltd. [10]	
Star Frozen Foods Co., Ltd.	
Starfoods Industries Co., Ltd.	
Suntechthai Intertrading Co., Ltd.	
Surapon Foods Public Co., Ltd./Surat Seafoods Co., Ltd. [10]	
Surapon Nichirei Foods Co., Ltd.	
Suratthani Marine Products Co., Ltd.	
Suree Interfoods Co., Ltd.	
T.S.F. Seafood Co., Ltd.	
Tanaya International Co., Ltd.	
Tanaya Intl.	
Tep Kinsho Foods Co., Ltd.	
Teppitak Seafood Co., Ltd.	
Tey Seng Cold Storage Co., Ltd.	
Thai Agri Foods Public Co., Ltd.	
Thai Mahachai Seafood Products Co., Ltd.	
Thai Ocean Venture Co., Ltd.	
Thai Patana Frozen	
Thai Prawn Culture Center Co., Ltd.	
Thai Royal Frozen Food Co., Ltd.	
Thai Spring Fish Co., Ltd.	
Thai Union Frozen Products Public Co., Ltd./Thai Union Seafood Co., Ltd. [12]	
Thai Union Manufacturing Company Limited	
Thai World Imports and Exports Co., Ltd. [10]	
Thai Yoo Ltd., Part.	
The Siam Union Frozen Foods Co., Ltd. [10]	
The Union Frozen Products Co., Ltd./Bright Sea Co., Ltd. [13]	
Trang Seafood Products Public Co., Ltd.	
Transamut Food Co., Ltd.	
Tung Lieng Tradg	
United Cold Storage Co., Ltd.	
V. Thai Food Product Co., Ltd. [10]	
Xian-Ning Seafood Co., Ltd.	
Yeenin Frozen Foods Co., Ltd.	
YHS Singapore Pte	

	Period to be reviewed
ZAFCO TRDG	

[1] In the 2007–2008 administrative review, the Department found that the following companies comprised a single entity: Ananda Aqua Exports (P) Ltd., Ananda Foods, and Ananda Aqua Applications. *See Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 9991, 9994 (Mar. 9, 2009) (*2007–2008 Indian Shrimp Preliminary Results*), unchanged in *Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 33409 (July 13, 2009) (*2007–2008 Indian Shrimp Final Results*). Absent information to the contrary, we intend to treat these companies as a single entity for purposes of this administrative review.

[2] The requests for review from the interested parties included certain companies with similar names and/or addresses. We have contacted these companies for clarification regarding their correct names and/or addresses. Pending receipt of this information, where name differences are distinct, we have treated these companies as separate entities for purposes of initiation.

[3] The interested parties' requests for review included certain companies with similar names and/or addresses. For purposes of initiation, we have treated these companies as the same entity based on information obtained in prior administrative reviews. *See* the March 30, 2012, Memorandum from Holly Phelps to The File entitled, ''Placing Public Information from Prior Antidumping Duty Administrative Reviews on the Record of the 2011–2012 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India.''

[4] In the 2004–2006 administrative review, the Department found that the following companies comprised a single entity: Devi Marine Food Exports Private Limited, Kader Investment and Trading Company Private Limited, Kader Exports Private Limited, Liberty Frozen Foods Private Limited, Liberty Oil Mills Limited, Premier Marine Products, and Universal Cold Storage Private Limited. *See 2004–2006 Indian Shrimp Final Results,* 72 FR at 52058. Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[5] The Department received a request for an administrative review of the antidumping order on shrimp from India with respect to Devi Sea Foods Limited (Devi). Shrimp produced and exported by Devi was excluded from this order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813, 41814 (July 19, 2010). However, shrimp produced by other Indian producers and exported by Devi remain subject to the order. Thus, this administrative review with respect to Devi covers only shrimp which was produced in India by other companies and exported by Devi.

[6] In the 2006–2007 administrative review, the Department found that the following companies comprised a single entity: Diamond Seafoods Exports, Edhayam Frozen Foods Pvt. Ltd., Kadalkanny Frozen Foods, and Theva & Company. *See Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 12103, 12106 (Mar. 6, 2008), unchanged in *Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 40492 (July 15, 2008). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[7] In the 2007–2008 administrative review, the Department found that the following companies comprised a single entity: Falcon Marine Exports Limited and K.R. Enterprises. *See 2007–2008 Indian Shrimp Preliminary Results,* 74 FR at 9994, unchanged in *2007–2008 Indian Shrimp Final Results,* 74 FR at 33409. Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[8] On August 27, 2010, the Department found that Srikanth International is the successor-in-interest to NGR Aqua International. *See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Changed Circumstances Review,* 75 FR 52718 (Aug. 27, 2010). Because the effective date of this determination is during a prior POR, we have included only Srikanth International for purposes of initiation.

[9] On December 1, 2011, the Department found that A Foods 1991 Co., Limited is the successor-in-interest to May Ao Company Limited. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from Thailand,* 75 FR 74684 (Dec. 1, 2011). Because the effective date of this determination is during a prior POR, we have included only A Foods 1991 Co., Limited for purposes of initiation.

[10] The requests for review from the interested parties included certain companies with similar names and/or addresses. For purposes of initiation, we have treated these companies as the same entity based on information obtained prior to initiation of this administrative review. *See* the March 30, 2012, Memorandum from Holly Phelps to The File entitled, ''Placing Public Information from the 2010–2011 Antidumping Duty Administrative Review on the Record of the 2011–2012 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand.''

[11] In the 2007–2008 administrative review, the Department found that the following companies comprised a single entity: Pakfood Public Company Limited, Asia Pacific (Thailand) Co., Ltd., Chaophraya Cold Storage Co. Ltd., Okeanos Co. Ltd., Okeanos Food Co. Ltd., and Takzin Samut Co. Ltd. *See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47551 (Sept. 16, 2009), and accompanying Issues and Decision memorandum at Comment 6. Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[12] In the 2006–2007 administrative review, the Department found that the following companies comprised a single entity: Thai Union Frozen Products Public Co., Ltd. and Thai Union Seafood Co., Ltd. *See Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 12088 (Mar. 6, 2008), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 50933 (Aug. 29, 2008). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[13] In the less-than-fair-value investigation, the Department found that the following companies comprised a single entity: The Union Frozen Products Co., Ltd. and Bright Sea Co., Ltd. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 47100 (Aug. 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (Dec. 23, 2004). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (Jan. 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (Feb. 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule*. The Department intends to reject

factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a)(1) of the Act and 19 CFR 351.221(c)(1)(i) and (f)(2)(i).

Dated: March 28, 2012.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–7874 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Notice of Extension of Time Limit for the Preliminary Results of Administrative Review of the Suspension Agreement on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for the Preliminary Results of Administrative Review of the Suspension Agreement on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the Agreement Suspending the Antidumping Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation (the Agreement).

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Anne D'Alauro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0162 or (202) 482–4830. *Extension of Preliminary Results:* The Department published its notice of initiation of this review in the **Federal Register** on August 26, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011). Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines are April 2, 2012, for the preliminary results and July 31, 2012, for the final results. Section 751(a)(3)(A) of the Tariff Act provides that, if it is not practicable to complete the review within these time limits, the Department may extend the time limit for completion of the preliminary results by 120 days.

The Department finds that it is not practicable to complete the preliminary results by April 2, 2012. In this administrative review, in accordance with section 751(a)(1)(C) of the Tariff Act, the Department is reviewing both the status of, and compliance with, the Agreement. Because domestic interested parties have raised the complex issue of whether the Agreement is fulfilling its statutory requirement to prevent price undercutting and suppression of domestic hot-rolled steel prices, the Department needs additional time to complete its preliminary analysis in this administrative review of the Agreement. The Department must carefully consider the information submitted by the respondent and domestic interested parties in this review and must address the issues raised in the context of this administrative review. Therefore, the Department is extending the time limit for completing the preliminary results of the review until May 24, 2012. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is published in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: March 27, 2012.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2012–7861 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber from the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is extending the time limit for the preliminary results of the administrative review of certain polyester staple fiber from the People's Republic of China (''PRC''). This review covers the period June 1, 2010, through May 31, 2011.

DATES: *Effective Date:* April 2, 2012

FOR FURTHER INFORMATION CONTACT: Steven Hampton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0116.

Background

On July 28, 2011, the Department published a notice of initiation of the administrative review of the antidumping duty order on certain polyester staple fiber from the PRC.[1] On February 9, 2012 the Department partially extended the deadline for the preliminary results of this review to April 2, 2012.[2]

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this administrative review within the original time limit because the Department requires additional time to analyze questionnaire responses and evaluate surrogate value submissions for purposes of the preliminary results. Therefore, the Department is fully extending the time limit for completion of the preliminary results of this administrative review by 90 days. The preliminary results will now be due no later than June 29, 2012. The final

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocations in Part and Deferral of Administrative Reviews,* 76 FR 45227 (July 28, 2011).

[2] *See Certain Polyester Staple Fiber From the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 6783 (February 9, 2012).

results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 26, 2012.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–7849 Filed 3–30–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received a request for a new shipper review (NSR) of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d), we are initiating an antidumping duty NSR of Shandong Yinfeng Rare Fungus Co., Ltd. (Yinfeng). The period of review (POR) of this NSR is February 1, 2011, through January 31, 2012.

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published the antidumping duty order on certain preserved mushrooms from the PRC.[1] The antidumping duty order on certain preserved mushrooms from the PRC therefore has a February anniversary month. On February 29, 2012, Yinfeng timely filed a request for an NSR. *See* Letter from Shanghai Yuet Fai Commercial Consulting Co., Ltd., to Secretary of Commerce dated February 29, 2012 (Yingfeng NSR Request). In its request for review, Yinfeng identified itself as both exporter and producer of the subject merchandise. *Id.,* at 1.

Pursuant to the requirements set forth in section 751(a)(2)(B)(i) of the Act and 19 CFR 351.214(b)(2), Yinfeng certified that: (1) It did not export subject merchandise to the United States during the period of investigation (POI) (*see* section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i)); (2) since the initiation of the investigation it has never been affiliated with any company that exported subject merchandise to the United States during the POI, including those companies not individually examined during the investigation (*see* section 751(a)(2)(B)(i)(II) of the Act and19 CFR 351.214(b)(2)(iii)(A)); and (3) its export activities were not controlled by the central government of the PRC (*see* 19 CFR 351.214(b)(2)(iii)(B)). *See* Yingfeng NSR Request at 2–3 and Exhibits 2 and 4. Additionally, in accordance with 19 CFR 351.214(b)(2)(iv), Yinfeng submitted documentation establishing the following: (1) The date on which it first shipped subject merchandise to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customers in the United States. *Id.,* at 2 and Exhibit 1.

Initiation of Review

Based on information on the record, and in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we find the request Yinfeng submitted meets the statutory and regulatory requirements for initiation of an NSR. *See* Memorandum from Mark Flessner to the File through Richard Weible entitled, ''Initiation of AD New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China (A–570–851),'' dated March 28, 2012. Accordingly, we are initiating an NSR of the antidumping duty order on certain preserved mushrooms from the PRC produced and exported by Yinfeng. This review covers the period February 1, 2011, through January 31, 2012. We intend to issue the preliminary results of this review no later than 180 days after the date on which this review is initiated, and the final results within 90 days after the date on which we issue the preliminary results. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(h)(i).

In cases involving non-market economies, the Department requires that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities.[2] Accordingly, we will issue a questionnaire to Yinfeng that will include a separate rates section. This review will proceed if the response provides sufficient indication that Yinfeng is not subject to either *de jure* or *de facto* government control with respect to its exports of preserved mushrooms. However, if Yinfeng does not demonstrate eligibility for a separate rate, it will be deemed not to have met the requirements of section 751(a)(2)(B)(i) of the Act and 19 CFR 351.214(2)(b)(i) and therefore not separate from the PRC-wide entity; we will rescind the NSR accordingly.[3]

Upon initiation, we shall direct U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of subject merchandise produced and exported by Yinfeng. We shall instruct CBP to allow (at the option of the importer) the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for certain entries of the subject merchandise produced and exported by Yinfeng in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Yinfeng certified that it both produced and exported the subject merchandise, the sales of which form the basis for its NSR request, we shall instruct CBP to permit the use of a bond only for entries of subject merchandise where Yinfeng acted both as producer and exporter.

To assist in its analysis of the *bona fides* of Yinfeng's sales, upon initiation of this NSR, the Department will require Yinfeng to submit on an ongoing basis complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to business proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify

[1] *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China,* 64 FR 8308 (February 19, 1999).

[2] *See,* generally, *Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews,* 75 FR 72794, 72796 (November 26, 2010), unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews,* 76 FR 9747 (February 22, 2011).

[3] *See Certain Preserved Mushrooms from the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Reviews,* 75 FR 62108, 62108 (October 7, 2010).

to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (Interim Final Rule) (amending 19 CFR 351.303(g)(1) and (2)); *see also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). The formats for the revised certifications are provided at the end of the Interim Final Rule. The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

This notice is published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.221(c)(1)(i).

Dated: March 27, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–7966 Filed 3–30–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not-collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after April 2012, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

which the Department intends to exercise its discretion in the future.

Opportunity to Request a Review: Not later than the last day of April 2012,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period of review
Antidumping Duty Proceedings	
INDIA: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP), A–533–847	4/1/11–3/31/12
The People's Republic of China: Activated Carbon, A–570–904	4/1/11–3/31/12
The People's Republic of China: Certain Steel Threaded Rod, A–570–932	4/1/11–3/31/12
The People's Republic of China: Frontseating Service Valves, A–570–933	4/1/11–3/31/12
The People's Republic of China: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP), A–570–934	4/1/11–3/31/12
The People's Republic of China: Magnesium Metal, A–570–896	4/1/11–3/31/12
The People's Republic of China: Non-Malleable Cast Iron Pipe Fittings A–570–875	4/1/11–3/31/12
Countervailing Duty Proceedings	
Norway: Fresh and Chilled Atlantic Salmon, C–403–802	1/1/11–2/12/11

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov.*

All requests must be filed electronically in Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov. See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of April 2012. If the Department does not receive, by the last day of April 2012, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 21, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–7862 Filed 3–30–12; 8:45 am]

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[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

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 May 2012

The following Sunset Review is scheduled for initiation in May 2012 and will appear in that month's Notice of Initiation of Five-Year Sunset Review.

Antidumping duty proceedings	Department contact
Polyester Staple Fiber from the People's Republic of China (A–570–905) (1st Review)	Jennifer Moats, (202) 482–5047.

Countervailing Duty Proceedings

No Sunset Review of suspended investigations is scheduled for initiation in May 2012.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in May 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: March 22, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–7865 Filed 3–30–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Standard Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain welded carbon steel standard pipe from Turkey for the period January 1, 2010, through December 31, 2010. We preliminarily find that the net subsidy rate for both companies under review is *de minimis. See* the ''Preliminary Results of Review'' section below. Interested parties are invited to comment on these preliminary results. *See* the ''Public Comment'' section, *infra.*

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska at 202–482–8362 (for Borusan), Kristen Johnson at 202–482–4793 (for Erbosan), and Gayle Longest at 202–482–3338 (for Toscelik), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department published in the **Federal Register** the CVD order on certain welded carbon steel pipe and tube products from Turkey.[1] On March 1, 2011, the Department published a notice of opportunity to request an administrative review of this CVD order.[2] On March 30, 2011, we received a letter from Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) requesting that the company be reviewed by the Department. On March 31, 2011, we received a request from Wheatland Tube Company (Wheatland), the petitioner, to review the following companies: Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), and Borusan Istikbal Ticaret T.A.S. (Istikbal), (collectively, Borusan) and Tosyali dis Ticaret A.S. (Tosyali) and Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Profil), (collectively, Toscelik).

On April 27, 2011, the Department initiated an administrative review of the CVD order on certain welded carbon steel standard pipe from Turkey for the period January 1, 2010, through December 31, 2010, covering Borusan, Erbosan, and Toscelik.[3]

On April 27, 2011, we issued the initial questionnaire to Borusan, Erbosan, Toscelik, and the Government of the Republic of Turkey (GOT). On

[1] *See Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey,* 51 FR 7984 (March 7, 1986).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 76 FR 11197 (March 1, 2011).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 23545 (April 27, 2011).

June 28, 2011, we received the GOT's initial questionnaire response. On July 5, 2011, we received responses to the initial questionnaire from Erbosan and Toscelik. On July 14, 2011, we received Borusan's response to the initial questionnaire.

To the GOT, we issued supplemental questionnaires on July 18, 2011, October 3, 2011, January 5, 2012, and February 1, 2012, and the GOT submitted its responses on September 12, 2011, November 4, 2011, December 15, 2012, January 30, 2012, and February 8, 2012, respectively. To Erbosan, we issued supplemental questionnaires on July 19, 2011, and October 3, 2011, and the company submitted its responses on September 12, 2011, and November 4, 2011, respectively. To Toscelik, we issued a supplemental questionnaire on July 25, 2011, and January 4, 2012, January 20, 2012, and February 1, 2012. Toscelik provided its questionnaire responses on August 29, 2011, January 20, 2012, January 30, 2012, and February 8, 2012. To Borusan, we issued supplemental questionnaires on September 8, 2011 and September 29, 2011, to which it responded on September 20, 2011 and October 6, 2011.

On August 3, 2011, United States Steel Corporation (U.S. Steel), a domestic interested party, submitted a letter requesting that the Department conduct verification of the questionnaire responses submitted by the respondents in this review.

On August 1, 2011, U.S. Steel requested an extension of time for the submission of new subsidy allegations. The original deadline for submitting new subsidy allegations was August 3, 2011. On August 4, 2011, we extended the time period until August 24, 2011.[4] On August 11, 2011, Wheatland filed new subsidy allegations and new factual information. U.S. Steel submitted new factual information on August 18, 2011, and new subsidy allegations on August 24, 2011. Wheatland and U.S. Steel allege that Borusan, Erbosan, and Toscelik benefitted from a variety of countervailable subsidies provided by the GOT, such as the provision of land and buildings for less than adequate remuneration, grants, preferential lending, reduction in tax rates, and exemptions from corporate income tax, customs duties and fees, and value added taxes (VAT).

On October 13, 2011, the Department initiated on the new subsidy allegations.[5] On October 19, 2011, we issued the new subsidies questionnaire to the GOT. On October 21, 2011, we issued the new subsidies questionnaire to Borusan, Erbosan, and Toscelik. Borusan, Toscelik, and Erbosan submitted their responses to the new subsidies questionnaire on December 11, 2011, December 12, 2011, and January 23, 2012, respectively. On January 13, 2012, we issued a supplemental new subsidy questionnaire to Borusan, to which it responded on January 26, 2012. The GOT submitted its response to the new subsidy questionnaire on December 15, 2011.

On October 20, 2011, the Department postponed the deadline for the preliminary results of this administrative review until March 30, 2012.[6]

On October 27, 2011, the Department requested U.S. Customs and Border Protection (CBP) data on Type 3 entries (*i.e.,* suspended entries of subject merchandise) by Erbosan during the period of review (POR).[7] Because the CBP data showed no suspended Type 3 entries by Erbosan, on November 3, 2011, the Department requested from Erbosan documentation demonstrating a suspended Type 3 entry by the company during the CVD POR.[8]

On November 17, 2011, Erbosan reported that because the exports of subject merchandise to the United States during the POR were to an unrelated importer, the company does not have any entry documentation.[9] On December 2, 2011, officials of Import Administration met with Erbosan's counsel to discuss the status of the company's entries of subject merchandise during the POR. [10]

On December 20, 2011, the Department published a notice of intent to rescind the administrative review of Erbosan and provided interested parties with the opportunity to submit comments on the issue.[11] On January 9, 2012, we received and considered the comments from Erbosan and Wheatland on the notice of preliminary rescission. Because there are no suspended entries of subject merchandise produced by Erbosan against which to assess duties, the Department determined to rescind the 2010 administrative review for Erbosan.[12]

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested and not rescinded. Therefore, the only companies subject to this review are Borusan and Toscelik.

Scope of the Order

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Period of Review

The period for which we are measuring subsidies is January 1, 2010, through December 31, 2010.

Company History

BMB and its affiliated foreign trading company, Istikbal, are both part of the Borusan Group. BMB produces subject merchandise for both the home and export markets. During the POR, all subject merchandise exported to the United States was exported from Turkey by BMB. For sales of subject merchandise to other destinations, Istikbal was the exporter from Turkey. *See* Borusan's July 14, 2011, questionnaire response at page 2. Consistent with 19 CFR 351.525(c), we are attributing any subsidies received by Istikbal to BMB.

Toscelik Profil and its affiliated foreign trading company, Tosyali, are

[4] *See* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Extension of Time for the Filing of New Subsidy Allegations,'' (August 4, 2011).

[5] *See* Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, from Robert Copyak, Senior Financial Analyst, AD/CVD Operations, Office 3, regarding ''Decision Memorandum on New Subsidy Allegations,'' (October 13, 2011).

[6] *See Certain Welded Carbon Steel Standard Pipe from Turkey: Extension of Time for Preliminary Results of Countervailing Duty Administrative Review,* 76 FR 65179 (October 20, 2011).

[7] *See* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Request for Customs Data in the Countervailing Duty Administrative Review of Certain Welded Carbon Steel Standard Pipe from Turkey,'' (October 27, 2011).

[8] *See* Letter from the Department to Erbosan regarding ''Entry Documentation,'' (November 3, 2011).

[9] *See* Erbosan's ''Response to Entry Documentation Request,'' (November 17, 2011) at 2.

[10] *See* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Meeting with Counsel for Erbosan,'' (December 5, 2011).

[11] *See Certain Welded Carbon Steel Standard Pipe and Tube from Turkey: Intent to Rescind Countervailing Duty Administrative Review, in Part,* 76 FR 78886 (December 20, 2011).

[12] *See Certain Welded Carbon Steel Standare PIpie and Tube from Turkey: Notice of Rescision of Countervailing Duty Administrative Review, In Part,* 77 FR 6542 (February 8, 2012), and accompanying Issues and Decision Memorandum.

owned by Tosyali Holding, a Turkish holding company. *See* Toscelik Profil's July 5, 2011, questionnaire response (Toscelik's July QR) at 5. Toscelik Profil, which produces subject merchandise for both the domestic and export markets, was established in 1992. *Id.* at 6 and Exhibit 4. Tosyali, founded in 1996, is the exporter of record with respect to Toscelik Profil's export sales and sells subject merchandise to unaffiliated customers in the United States. *Id.* at 6–7 and Exhibit 7. Consistent with 19 CFR 351.525(c), we are attributing any subsidies received by Tosyali to Toscelik Profil.

Subsidies Valuation Information

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 15 years. No interested party has claimed that the AUL of 12 years is unreasonable.

Further, for non-recurring subsidies, we applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Benchmark Interest Rates

Short-Term Benchmark

To determine whether government-provided loans under review conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans. *See* 19 CFR 351.505(a). In the July 14, 2011, questionnaire response at Exhibit 25, Borusan submitted comparable company–specific short term interest rates for 2010. Thus, we calculated the 2010 benchmark interest rate for short term Turkish Lira, Euro and U.S. dollar denominated loans based on the data reported by Borusan as provided under 19 CFR 351.505(a)(2)(ii). To calculate the short term benchmark rates for Borusan, we derived an annual average of the interest rates on commercial loans that Borusan took out during the years in which the government loans were issued, weighted by the principle amount of each loan.

Where no company-specific benchmark interest rates are available, as is the case for Borusan for 2009, the Department's regulations direct us to use a national average interest rate as the benchmark. *See* 19 CFR 351.505(a)(3)(ii). However, according to the GOT, there is no official national average short-term interest rate available in Turkey.[13] Therefore, consistent with our past practice in Turkey CVD proceedings,[14] we calculated the 2009 and 2010 benchmark interest rate for short-term Turkish Lira denominated loans based on short-term interest rate data as reported by *The Economist.* For U.S. dollar-denominated interest rates, we used lending rate data from *International Financial Statistics,* a publication of the International Monetary Fund (IMF). For Euro-denominated interest rates, we used prime lending rate data from Moneyrate, an online statistical database operated by the *Wall Street Journal.*

As discussed below, Borusan paid commissions with regard to loans received under several countervailable loan programs (*e.g.,* the Short-Term Pre-Shipment Rediscount Program, and Pre-Shipment Export Credits programs). It is the Department's practice to normally compare effective interest rates rather than nominal rates in making the loan comparison. *See Countervailing Duties; Final Rule,* 63 FR 65348, 65362 (November 25, 1998) (*Preamble*). ''Effective'' interest rates are intended to take account of the actual cost of the loan, including the amount of any fees, commissions, compensating balances, government charges, or penalties paid in addition to the ''nominal'' interest rate.

The benchmark short-term Turkish Lira interest rates sourced from *The Economist* and the *Wall Street Journal,* however, do not include commissions or fees paid to commercial banks, *i.e.,* they are nominal rates. Further, we preliminarily determine that we lack definitive evidence to conclude that the company-specific short-term rates reported by Borusan include commissions. Therefore, for these preliminary results, we compared the benchmark interest rate to the interest rate that Borusanwas charged on the countervailable loans, exclusive of commissions, to make the comparison on a nominal interest rate basis.

Long-Term Benchmark

As discussed above, to determine whether government-provided loans under review conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans. *See* 19 CFR 351.505(a). However, Toscelik, the firm for which a long-term interest rate is required, did not report any company-specific long-term benchmark rates. Where no company-specific benchmark interest rates are available, as is the case in this review, the Department's regulations direct us to use a national average interest rate as the benchmark. *See* 19 CFR 351.505(a)(3)(ii). We also lack information from the GOT concerning long-term interest rates in Turkey. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), we used the national average discount rate in Turkey for the relevant years, as reported in *International Financial Statistics,* as the long-term discount rate utilized in the grant allocation formula.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Deduction from Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law, effective June 2, 1995, allows taxpayers engaged in export activities to claim a lump sum deduction from gross income, in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings. *See* Government of Turkey's initial questionnaire response (GOT's initial questionnaire) at II–4 and II–5. The deduction for export earnings may either be taken as a lump sum on a company's annual income tax return or be shown within the company's marketing, selling and distribution expense account of the income statement to record the subtraction of eligible undocumented expenses from gross income. *Id.* Undocumented expenses are expenses that are not supported by invoices for lodging, food, and transportation costs incurred during overseas business trips. *Id.* Under this program, those expenses are deductible expenditures for tax purposes. *Id.*

[13] *See* GOT's Initial Questionnaire Response at 17 (June 28, 2011).

[14] *See Carbon and Certain Alloy Steel Wire Rod from Turkey; Final Negative Countervailing Duty Determination,* 67 FR 55815 (August 30, 2002), and accompanying Issues and Decision Memorandum (Wire Rod Memorandum) at ''Benchmark Interest Rates;'' *see also Preliminary Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey,* 72 FR 62837, 62838 (November 7, 2007) (*Turkey Pipe 2006 Preliminary Results*), unchanged in *Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey,* 73 FR 12080 (March 6, 2008) (*Turkey Pipe 2006 Final Results*).

Consistent with prior determinations, we preliminarily find that this tax deduction is a countervailable subsidy. *See, e.g., Certain Welded Carbon Steel Standard Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review,* 75 FR 16439, 16440–41 (April 1, 2010) (*Turkey Pipe 2010 Preliminary Results*), unchanged in the final results, *see Certain Welded Carbon Steel Standard Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review,* 75 FR 44766 (July 29, 2010) (*Turkey Pipe 2010 Final Results*).

The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Tariff Act of 1930, as amended (the Act), because it represents revenue forgone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. It is also specific under section 771(5A)(B) of the Act because its receipt is contingent upon export earnings. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior finding of countervailability for this program.

During 2010, BMB, Istikbal, and Tosyali used the deduction for export earnings program with respect to their 2009 income taxes.

The Department typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate for this program, we calculated the tax savings realized by BMB, Istikbal, and Tosyali in 2010, as a result of the deduction for export earnings. For BMB and Istikbal, we divided their combined tax savings by Borusan's total export sales for 2010. For Tosyali, we divided the tax savings realized by Toscelik's total export sales for 2010.

On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.08 percent *ad valorem* for Borusan, and 0.04 percent *ad valorem* for Toscelik.

B. Foreign Trade Companies Short-Term Export Credits

The Foreign Trade Company (FTC) loan program was established by the Turkish Export Bank to meet the working capital needs of exporters, manufacturer-exporters, and manufacturers supplying exporters. *See* GOT's Initial Questionnaire at II–31. This program is specifically designed to benefit Foreign Trade Corporate Companies (FTCC) and Sectoral Foreign Trade Companies (SFTC).[15] *Id.* An FTCC is a company whose export performance was at least US$100 million in the previous year and has paid-in-capital of Turkish Lira 2 million or more. The Undersecretariat for Foreign Trade grants FTCC and SFTC status to eligible companies. *Id.*

To eligible companies, the Export Bank provides short-term export loans in Turkish Lira or foreign currency, based on their prior export performance and financial criteria, up to 100 percent of the free on board (FOB) export commitment. *Id.* at II–34. The loan interest rates are set by the Export Bank and the maximum term for the loans is 360 days. *Id.* To qualify for an FTC loan, along with the necessary application documents, a company must provide a bank letter of guarantee, equivalent to the loan's principal and interest amount, because the financing is a direct credit from the Export Bank. *Id.* at II–33. During the POR, Istikbal was the only Borusan company to pay interest against FTC credits during the POR. *Id.* at II–35. *See* Borusan's July 14, 2012, questionnaire response at p. 26.

Consistent with previous determinations, we preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. *See Turkey Pipe 2010 Preliminary Results,* 75 FR at 16439 unchanged in the *Turkey Pipe 2010 Final Results; see also Turkey Pipe 2006 Preliminary Results,* 72 FR at 62839, unchanged in the *Turkey Pipe 2006 Final Results.* The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments of interest that Istikbal made on its loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. Further, the FTC loans are not tied to a particular export destination. Therefore, we treated this program as an untied export loan program, which renders it countervailable regardless of whether the loans were used for exports to the United States. *Id.*

Pursuant to 19 CFR 351.505(a)(1), we calculated the benefit as the difference between the payments of interest that Istikbal made on its FTC loans during the POR and the payments the company would have made on comparable commercial loans.[16] In accordance with section 771(6)(A) of the Act, we subtracted from the benefit amount the fees that Istikbal paid to commercial banks for the required letters of guarantee. We then divided the resulting benefit by Borusan's total export sales for 2010. On this basis, we preliminarily find that the net countervailable subsidy for this program is 0.01 percent *ad valorem* for Borusan.

Toscelik reported that it did not use this program during the POR.

C. Pre-Export Credits

The Pre-Export Credit program meets the working capital needs of exporters, manufacturers, and manufacturers supplying exporters, except for FTC and SFTC classified exporters, which are ineligible to receive credits under this program. *See* GOT's Initial Questionnaire at II–21. Eligible applicants are companies that exported more than $200,000 of goods in the previous 12 months. *Id.* Like FTC loans, the Export Bank directly extends pre-export loans to eligible companies for the FOB value of the export commitment. *Id.* at II–22. The loans, which have interest rates set by the Export Bank, are denominated in either Turkish Lira or foreign currency and have a maximum maturity of 540 days. *Id.* at II–25. To qualify for a pre-export loan, along with the necessary application documents, a company must provide a bank letter of guarantee, equivalent to the loan's principal and interest amount. *Id.* at II–22 to II–23. In March, 2008, interest rates applied to companies started to be determined according to their outstanding risks in Short Term Export Credits. *Id.* at II–18. During the POR, Borusan (specifically, BMB) was the only respondent that paid interest against pre-export loans. Id. at II–26. *See* Borusan's July 14, 2011, questionnaire response at p. 27

Consistent with previous determinations, we preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. *See, e.g., Turkey Pipe 2010 Preliminary Results,* unchanged in the *Turkey Pipe 2010 Final Results.* The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between

[15] To promote exports and diversify export products and markets, the GOT encouraged small and medium scale enterprises to form SFTC, which comprise a group of companies that operate together in a similar sector.

[16] *See* ''Benchmark Interest Rates,'' *supra* (discussing the benchmark rates used in these preliminary results).

the payments of interest that BMB made on the loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

Further, like the FTC loans, these loans are not tied to a particular export destination. Therefore, we treated this program as an untied export loan program rendering it countervailable regardless of whether the loans were used for exports to the United States. *Id.* Pursuant to 19 CFR 351.505(a)(1), we calculated the benefit as the difference between the payments of interest that BMB made on its pre-export loans during the POR and the payments the company would have made on comparable commercial loans. In accordance with section 771(6)(A) of the Act, we subtracted from the benefit amount the fees which BMB paid to commercial banks for the required letters of guarantee. We then divided the resulting benefit by Borusan's total export value for 2010. On this basis, we preliminarily find that the net countervailable subsidy for this program is 0.01 percent *ad valorem* for Borusan.

Toscelik reported that it did not use this program during the POR.

D. Pre-Shipment Export Credits

Turkish Export Bank provides short-term pre-shipment export loans through intermediary commercial banks to exporters, manufacturer-exporters, and manufacturers supplying exporters and SFTCs to assist them in meeting their export commitments. *See* GOT's Initial Questionnaire Response at II–10. The commercial banks, which assume the default risks of the borrowers, are allocated credit lines by the Export Bank to make the loans. *Id.* These loans cover up to 100 percent of the FOB export value, are denominated in either Turkish Lira or foreign currency, and have a maximum term of 540 days. *Id.* The interest rates charged on these pre-shipment loans are set by the Export Bank. *Id.* However, because these loans are provided through intermediary commercial banks, those banks can add a maximum one percent to the Turkish Lira loan interest rate and 0.5 percent to the foreign currency loan interest rate as their commissions.[17] Since March 2008 interest rates applied to companies are determined according to their outstanding risks in Short Term Export Credits. *Id.* at II–11.

In previous determinations, the Department found this program to be countervailable because receipt of the loans is contingent upon export performance and a benefit was conferred to the extent that the interest rates paid on the government loan were less than the amount the recipient would pay on comparable commercial loans. *See, e.g., Turkey Pipe 2010 Preliminary Results,* 75 FR 16442, unchanged in the *Turkey Pipe 2010 Final Results.*

The Department also found that this program is an untied export loan program because the loans are not specifically tied to a particular destination at the time of approval and the borrower only has to demonstrate that the export commitment was satisfied (*i.e.,* exports amounting to the FOB value of the credit) to close the loan. *See Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey,* 71 FR 43111 (July 31, 2006) (*Turkey Pipe 2004 Final Results*), and accompanying Issues and Decision Memorandum at ''Pre-Shipment Export Credits.''

In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior findings for this program. During the POR, Borusan (specifically, BMB) was the only respondent that paid interest against pre-shipment export credit loans.

Consistent with the prior findings, we preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments of interest that BMB made on the loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

Pursuant to 19 CFR 351.505(a)(1), we calculated the benefit as the difference between the payments of interest that BMB made on its pre-shipment export loans during the POR and the payments the company would have made on comparable commercial loans. It is the Department's practice to normally compare effective interest rates rather than nominal rates in making the loan comparison. *See Countervailing Duties; Final Rule,* 63 FR 65348, 65362 (November 25, 1998) (*Preamble*). ''Effective'' interest rates are intended to take account of the actual cost of the loan, including the amount of any fees, commissions, compensating balances, government charges, or penalties paid in addition to the ''nominal'' interest rate.

The benchmark short-term Turkish Lira interest rates sourced from *The Economist,* however, do not include commissions or fees paid to commercial banks, *i.e.,* they are nominal rates. *See* ''Benchmark Interest Rate,'' section *supra.* Therefore, for these preliminary results, we compared the benchmark Turkish Lira interest rate to the interest rate that BMB was charged on the pre-shipment export credit loans, exclusive of the intermediary bank commissions, to make the comparison on a nominal interest rate basis.

After computing the benefit amount, we subtracted from the benefit amount the fees which BMB paid to commercial banks for the required letters of guarantee, as provided under section 771(6)(A) of the Act. We then divided that amount by Borusan's total export value for 2010. On this basis, we preliminarily find that the net countervailable subsidy for this program is less than 0.005 percent *ad valorem* for Borusan. Consistent with the Department's practice, a subsidy rate of less than 0.005 percent *ad valorem* does not confer a measurable benefit and, therefore, we have not included it in the calculation of the net countervailable rate.[18]

Toscelik reported that it did not use this program during the POR.

E. Short-Term Pre-Shipment Rediscount Program

''Short Term Pre-Shipment Rediscount Program'' (SPRP) was established in 1995. It is administered by Turkey's Export Bank. *See* GOT's Initial Questionnaire at II–53. The SPRP program is designed to provide financial support to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters. *Id.* This program is contingent upon an export commitment. *Id.* Under SPRP, there is a limit of USD 200.000, up to USD 20 million per company. Loan payments shall be made within the credit period or at maturity to the Export Bank. Companies can repay

[17] *See* GOT's Initial Questionnaire Response at 13.

[18] *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review,* 74 FR 46100, 46103, 46106 (September 8, 2009) at ''Research and Development Grants Under the Industrial Development Act'' and ''R&D Grants Under the Act on the Promotion of the Development of Alternative Energy,'' unchanged in *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 55192 (October 27, 2009).

either in the foreign currency in which the loan was obtained or in a Turkish Lira equivalent of principal and interest set using the exchange rate determined by the Export Bank. *Id.* at II–55 to II–56. In March 2008 interest rates applied to companies started to be determined according to their outstanding risks in Short Term Export Credits. *Id.* at 54. During the POR, Borusan (specifically, BMB and Istikbal) paid interest against pre-shipment rediscount export credit loans. *See* Id. at Exhibit 9.

We preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments of interest that BMB and Istikbal made on the loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

Pursuant to 19 CFR 351.505(a)(1), we calculated the benefit as the difference between the payments of interest that BMB and Istikbal made on its short-term pre-shipment rediscount loans during the POR and the payments the companies would have made on comparable commercial loans. It is the Department's practice to normally compare effective interest rates rather than nominal rates in making the loan comparison. *See Countervailing Duties; Final Rule,* 63 FR 65348, 65362 (November 25, 1998) (*Preamble*). ''Effective'' interest rates are intended to take account of the actual cost of the loan, including the amount of any fees, commissions, compensating balances, government charges, or penalties paid in addition to the ''nominal'' interest rate.

The benchmark short-term Turkish Lira interest rates sourced from *The Economist,* however, do not include commissions or fees paid to commercial banks, *i.e.,* they are nominal rates. *See* ''Benchmark Interest Rate,'' section *supra.* Therefore, for these preliminary results, we compared the benchmark Turkish Lira interest rate to the interest rate that BMB and Istikbal were charged on the pre-shipment export rediscount credits, exclusive of the intermediary bank commissions, to make the comparison on a nominal interest rate basis.

After computing the benefit amount, we subtracted from the benefit amount the fees which BMB and Istikbal paid to commercial banks for the required letters of guarantee, as provided under section 771(6)(A) of the Act. We then divided that amount by Borusan's total export value for 2010. On this basis, we preliminarily find that the net countervailable subsidy for this program is 0.17 percent *ad valorem* for Borusan and 0XX percent ad valorem for Istikbal.

F. Law 5084: Withholding of Income Tax on Wages and Salaries

The Ministry of Finance of the GOT administers the withholding of income tax on wages and salaries program (withholding of income tax program) pursuant to Article 2 and Article 3 of Law 5084. The purpose of this program under Law 5084, as set forth in Article 3, is to increase investments and employment opportunities in certain provinces of Turkey by canceling the income tax calculated on the wages and salaries of the workers. *See* GOT's June 23, 2011, questionnaire response (GOT's June QR) at II–47 and Exhibit 23. According to the GOT, all enterprises or industries established in the 49 provinces which have a GDP per capita equal to or less than 1,550 US dollars (as determined by the State Institute of Statistics as of 2001) or which have a negative socio-economic development index value (as determined by the State Planning Organization as of 2003) can benefit from this program. *Id.* at II–49 and Exhibit 24.

The GOT states that this program includes two levels of withholding based on where the enterprise is established in the 49 eligible provinces. *See* GOT's June QR at II–47. According to the GOT, firms whose premises are established in Organized Industrial Zones (OIZ) or Industrial Zones located in the 49 provinces can benefit from 100 percent cancellation of income tax calculated on the wages of all workers who have been hired by income or corporate tax payers hiring at least ten workers. *Id.* Companies whose premises are located at other areas of the 49 eligible provinces can benefit from 80 percent cancellation of income tax calculated on the wages of all workers who have been hired by income or corporate tax payers hiring at least ten workers. *Id.* The GOT further states that the total amount to be cancelled cannot exceed the sum determined on the basis of the above mentioned rates calculated on the value to be obtained by multiplying the number of employees and the income tax payable for the minimum wage. *Id.* In addition, Article 7 of Law 5084 states that this program shall be applicable for any new investments for five years for the ones completed by December 31, 2007, for four years for the ones completed by December 31, 2008 and for three years for the ones completed by December 31, 2009. *See* GOT's June QR at II–47. Hence, the last date which the investment can benefit from this tax incentive program is December 31, 2012. *Id.*

During the POR, Toscelik reported that it received a benefit under this program with respect to its facility in the Osmaniye OIZ. *See* Toscelik's July 5, 2011, questionnaire response (July QR) at 20. Although Toscelik acknowledges receiving this benefit, Toscelik states that the relief of payment of withholding does not benefit subject merchandise since its Osmaniye plant produces only billet, hot-rolled coil, and spiral-weld pipe, none of which are subject merchandise and the relief only applies to the workers at the Osmaniye plant. *Id.* and Toscelik's August 29, 2011, questionnaire response (August QR). However, in a subsequent submission, Toscelik explains that the hot-rolled coils produced at the Osmaniye plant with a thickness greater than or equal to two millimeters are an input into subject merchandise. *See* Toscelik's August QR. Toscelik further explains that the equipment at the Osmaniye plant could not be used to produce subject merchandise because this facility does not have pipe-making equipment in Osmaniye for subject merchandise. *Id.*

With respect to the product tying arguments presented by Toscelik, we refer to 19 CFR 351.525(b)(5), which addresses the attribution of subsidies to a particular product. Section 351.525(b)(5)(i), states that if a subsidy is tied to the production or sale of particular products, the Secretary will attribute the subsidy only to those products. However, the respondent must demonstrate that the subsidy is, in fact, tied to out-of-scope merchandise and could not benefit production of in-scope merchandise. Because Toscelik produces hot-rolled coils at the Osmaniye plant that can be used as an input into the subject merchandise, we preliminarily determine that there is nothing on the record that demonstrates that this program is precluded from benefitting the subject merchandise.

In these *Preliminary Results,* we find that during the period of review, Toscelik benefitted from the withholding of income tax under this OIZ program pursuant to Section 771(5)(E)(i) of the Act in the amount of the income taxes on wages and salaries that it did not pay. We also find that this program is regionally-specific under 771(5A)(D)(iv) because it is limited to companies located in the 49 eligible

provinces. Moreover, we find that this program constitutes a financial contribution in the form of revenue forgone within the meaning of 19 CFR 351.503(iii) to the extent that it relieves Toscelik of the obligation to pay income taxes on wages and salaries that it would have had to pay absent this program.

We attributed the subsidy to Toscelik's total sales pursuant to 19 CFR 351.525(b)(3).

To calculate the benefit from the income tax relief that Toscelik received under the income tax withholding program, we summed the total amount of income tax savings reported by Toscelik during the POR. *See* 19 CFR 351.509(a)(1). To calculate the net subsidy rate, we divided the benefit by Toscelik's total f.o.b. sales during the POR. On this basis, we preliminarily determined Toscelik's net subsidy rate under this program to be 0.02 percent *ad valorem.*

G. Law 5084: Incentive for Employers' Share in Insurance Premiums

The Social Security Institution of the GOT administers the incentive for the Employer's Share in Insurance Premiums Program (Insurance Premiums Program) pursuant to Article 2 and Article 4 of Law 5084. *See* GOT's September QR at I–7 and GOT's June QR at Exhibit 23. The purpose of this program, as set forth in Article 4 of Law 5084, is to increase investments and employment opportunities in certain provinces of Turkey by providing support for the employer's share of insurance premiums through the GOT's limited or full undertaking of that share under certain conditions. *See* GOT's September QR at I–8. According to the GOT, all enterprises or industries established in the 49 provinces which have a GDP per capita equal to or less than 1,550 US dollars (as determined by the State Institute of Statistics as of 2001) or which have a negative socio-economic development index value (as determined by the State Planning Organization as of 2003) can benefit from this program. *See* GOT's September QR at I–8 and GOT's June QR at Exhibit 24.

The GOT states that this program includes two levels of activity based on where the enterprise is established in the 49 eligible provinces. *See* GOT's September QR at I–8. According to the GOT, firms whose premises are established in Organized Industrial Zones (OIZs) or Industrial Zones located in the 49 provinces can benefit from a 100 percent undertaking for income tax or corporate taxpayers (employers) hiring at least ten workers. *Id.* Companies whose premises are located at other areas of the 49 eligible provinces can benefit from 80 percent undertaking for income tax or corporate taxpayers (employers) hiring at least ten workers. *Id.* The GOT further states that the support will be provided if employers submit monthly premium and service documents to the Social Security Institution within the statutory periods in conformity with the Social Security Law No. 506 and if they pay the amounts corresponding to the employees' share in the insurance premiums of all the insured and the employers' share which is unmet by the Treasury. *Id.*

In addition, Article 7 of Law 5084 states that this program shall be applicable for any new investments for five years for the ones completed by December 31, 2007, for four years for the ones completed by December 31, 2008 and for three years for the ones completed by December 31, 2009. *See* GOT's September QR at I–9. Hence, the last date which the investment can benefit from this tax incentive program is December 31, 2012. *Id.*

Toscelik reported that it received benefits under this program during the POR, because its Osmaniye plant is located in the OIZ zone in the Osmaniye province which is one of the 49 eligible provinces. *See* Toscelik's August QR at 6. As explained above, because Toscelik produces hot-rolled coils at the Osmaniye plant that can be used as an input into the subject merchandise, we preliminarily determine that there is nothing on the record that demonstrates that this program is precluded from benefitting the subject merchandise. *See* ''Law 5084: Withholding of Income Tax on Wages and Salaries'' section above.

In these *Preliminary Results,* we also find that during the period of review, Toscelik benefitted from the forgiveness on payments for the employer's share of social security payments under this OIZ program pursuant to Section 771(5)(E)(iii) of the Act in the amount of the social security insurance premiums that it did not pay. We also find that this program is regionally-specific under 771(5A)(D)(iv) because it is limited to companies located in the 49 eligible provinces. Moreover, we find that this program constitutes a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act to the extent that it relieves Toscelik of the obligation to pay social security insurance premiums that it would have had to pay absent this program.

To calculate the benefit from the social security insurance premium relief that Toscelik received under the insurance premiums program, we summed the total amount of insurance premium savings reported by Toscelik during the POR. See 19 CFR 351.509(a)(1). To calculate the net subsidy rate, we divided the benefit by Toscelk's total f.o.b. sales during the POR. On this basis, we preliminarily determined Toscelik's net subsidy rate under this program to be 0.15 percent *ad valorem.*

H. Law 5084: Allocation of Free Land

The Ministry of Science, Industry and Technology General Directorate of Industrial Zones administers the free land allocation support program. *See* GOT's September QR at I–21. According to the GOT, all enterprises or industries established in the 49 provinces which have a GDP per capita equal to or less than 1,550 US dollars (as determined by the State Institute of Statistics as of 2001) or which have a negative socio-economic development index value (as determined by the State Planning Organization as of 2003) that are also located in OIZs can benefit from free land allocation support pursuant to Provisional Article 1 of Law 5084. *See* September QR at I–22 and GOT's June QR at Exhibit 24. The GOT further states that although the main provisions regarding the land allocation support for OIZs are regulated under Provisional Article 1, both Article 5 of Law 5084 and Provisional Article 1 govern the land allocation support. *Id.* The GOT further states that pursuant to Article 2, paragraph 1, clause (b) of Law 5084, the Allocation of Investment Sites Free of Charge is provided not only for aforementioned 49 provinces, but also for other provinces covered under the priority regions for development. *Id.* at I–23 and Exhibit 9. According to the GOT, the objective of this program is to reduce inter-regional disparities and to increase employment in provinces where the development is relatively low. *Id.*

With respect to companies in the OIZs, the GOT states that pursuant to Provisional Article 1, non-allocated parcels in the OIZ, located in the provinces subject to clause (b) of Article 2 of Law 5084 can be allocated to real or legal entities free of charge provided that the competent bodies of the OIZ decide accordingly. *See* GOT's September QR at I–24. According to the GOT, in OIZs under this program, free parcels were allocated to companies that employ at least ten employees. *Id.* The GOT states that OIZs are established anywhere in Turkey regardless of the geographic location with the aim of gathering the industrial facilities in well-coordinated manner with

necessary infrastructures. *Id.* The GOT states that the implementation of the program initiated on February 6, 2004, and remained in force until February 6, 2010, the end of the validity period mentioned in paragraph 4, Provisional Article 1. *Id.*

According to the GOT, to apply for this program the investor fills out the application form and submits it to the OIZ administration. *See* September QR at I–25. The GOT states that the OIZ administration decides whether or not to allocate the land to the investor within 30 days. *Id.* If the application is approved, then a Free Land Allocation Agreement is signed by the investor and the OIZ Administration and sent to the Ministry of Science, Industry and Technology. *Id.* According to the GOT, the investors who have benefited from free land allocation support are obligated to start production in two years at the latest while employing at least 10 people. *Id.* The GOT states that at the end of this period the land allocation of investors who have not started production are cancelled. *Id.* In addition, the land allocations of investors who have ceased investment are cancelled. *Id.*

Toscelik reported that it received free land in the Osmaniye OIZ under Law 5084 Provisional Article 1. *See* Toscelik's August 29, 2011 QR at 8. Toscelik reports that the land transfer was made on December 29, 2008 in a single installment. *Id.* at 10. Toscelik further reported that the land is the site of the entire Osmaniye facility, including the steel mill and the rolling mill that produces the coils that feed the spiral pipe mill in Osmaniye. *See* Toscelik's January 30, 2012, questionnaire response (January 30 QR) at 2. In addition, the site includes the welded pipe mill in Iskenderun, as well as the billets that feed the bar mill at Tosyali Demir in Iskenderun. *Id.*

In these *Preliminary Results,* we find that during the period of review, Toscelik benefitted from the provision of free land under this OIZ program pursuant to section 771(5)(E)(iv) of the Act in that it was able to obtain goods (*i.e.,* land) for less than it would otherwise pay in the absence of this subsidy. We also find that this program is regionally-specific under 771(5A)(D)(iv) of the Act because it is limited to companies located in the 49 eligible provinces. Moreover, we find that this program constitutes a financial contribution in the form of land provided for less than adequate remuneration (LTAR) within the meaning of section 771(5)(D)(iii) of the Act.

We preliminarily determine to rely on publicly available information concerning industrial land prices in Turkey for purposes of calculating a comparable commercial benchmark price for land available in Turkey. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, ''Placement of Land Price Information on Record of Review,'' (March 26, 2012) (Land Price Memorandum), a public document available via IA Access in Room 7046 of the Central Records Unit in the Commerce Building. We find this land price may serve as a comparable commercial benchmark under 19 CFR.351.511(a)(2)(i).

We considered other potential benchmarks submitted on the record but have preliminarily determined not to use them. Toscelik submitted transaction information with regard to an adjacent plot of land that it purchased from the GOT. *See* Toscelik's August QR at 9 and Exhibit 11 and Toscelik's February 8, 2012 QR at 1. However, we preliminarily determine that we cannot use this price as a commercial benchmark under 19 CFR 351.511(a)(2)(i) because it pertains to prices charged by the very provider of the good at issue, and we would not normally use these prices for comparison purposes under tier one or tier two where other more appropriate benchmark data are available. Our approach in this regard is consistent with the Department's practice. *See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review,* 74 FR 20923 (May 6, 2009), and accompanying Issues and Decision Memorandum at Comment 11. In addition, the GOT submitted a land valuation that it uses to calculate property taxes in the Osmaniye region. *See* GOT's February 8, 2012 QR at 7. However, information from the GOT indicates that this land value represents a ''minimum'' land price. *Id.* Because the land value from the GOT is a ''minimum'' price, we preliminarily determine that it cannot serve as a viable commercial benchmark under 19 CFR 351.511(a)(1).

To calculate the benefit, we multiplied the area of land Toscelik obtained free of charge from the GOT by the unit benchmark land price discussed above. Next, we performed the 0.5 percent test by dividing the benefit by Toscelik's total sales in 2008. *See* 19 CFR 351.524(b)(2). The resulting ratio exceeded 0.5 percent of Toscelik's total sales, therefore, we allocated a portion of the benefit to the POR using the Department's standard grant allocation formula. *See* 19 CFR 351.524(d). We lack company-specific information concerning interest rates charged to Toscelik on long-term debt. We also lack information from the GOT concerning long-term interest rates in Turkey. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), we used the national average discount rate in Turkey for 2008 as the long-term discount rate utilized in the grant allocation formula.

In its questionnaire response, Toscelik argues that the Department should use a 55-year AUL that corresponds to a depreciation schedule utilized in its financial statement for purposes of performing the grant allocation calculation described under 19 CFR 351.524(d). *See* Toscelik's August 29, 2011, questionnaire response at 16. However, for purposes of the preliminary results, we used the standard 15-year AUL described above in the ''Allocation Period'' section when conducting the grant allocation calculation. Our approach in this regard is consistent with the Department's approach in other land for less than adequate remuneration (LTAR) programs involving the outright sale of land. *See, e.g., Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea,* 67 FR 62102 (September 23, 2002), and accompanying Issues and Decision Memorandum at Provision of Land at Asan Bay, in which the Department used the standard AUL for the steel industry, as indicated by the IRS tables, to allocate benefits received under a land for LTAR program to the period of investigation.

To calculate the net subsidy rate, we divided the benefit by Toscelk's total f.o.b. sales during the POR. On this basis, we preliminarily determined Toscelik's net subsidy rate under this program to be 0.11 percent *ad valorem.*

I. Law 5084: Energy Support

The Ministry of Economy, General Directorate of Incentives and Implementation and Foreign Investments administers the energy support program pursuant to Article 2 and Article 6 of Law 5084. *See* GOT's September QR at I–13 and July QR at Exhibit 23. According to the GOT the main objective of this program is to reduce inter-regional disparities and to increase employment. *See* GOT's September QR at I–14. According to the GOT, all enterprises or industries established in the 49 provinces which have a GDP per capita equal to or less than 1,550 US dollars (as determined by the State Institute of Statistics as of

2001) or which have a negative socio-economic development index value (as determined by the State Planning Organization as of 2003) can benefit from this program. *See* GOT's September QR at I–14 and GOT's June QR at Exhibit 24.

The GOT states that enterprises operating or investing in the designated provinces are eligible for the support at rates ranging from 20 percent to 50 percent of the cost of electricity energy consumption, depending on their existing employment levels and the number of new hires. *See* GOT's September QR at I–14. Specifically, eligible businesses should operate in animal husbandry (including aquaculture and poultry), organic and biotechnological agriculture, mushroom cultivation and composting, greenhouse production, certificated seed production, cooling warehouse, manufacturing industry, mining, tourism accommodation, education or health services. In addition, these businesses should have at least 10 employees. *See* GOT's September QR at I–14 and GOT's July QR at Exhibit 23. According to the GOT, the energy support rate is applied as 20 percent of energy cost of the undertaking. The energy support rate increases 0.5 point for (1) each additional employee above 10 employees hired by newly established undertakings which started business as of April 1, 2005 or (2) for each additional employee above 10 employees who were hired after the date set by the Law for operating undertakings which stared business before April 1, 2005. *Id.* According to the GOT, energy support shall not exceed 50 percent of the electricity costs of the undertakings operating in OIZs or Industry Zones and 40 percent of these costs for the undertakings operating in other areas. *Id.*

According to the GOT, in order to benefit from energy support, eligible firms must apply to the Provincial Offices of the Ministry of Science, Industry and Technology. *See* GOT's September QR at I–16. The program is implemented by a provincial Energy Support Commission (Commission) which is chaired by the provincial governor or lieutenant governor. *Id.* The Commission is constituted from delegates from Provincial Offices of the Ministry of Science, Industry and Technology, Ministry of Finance (Tax Office), Ministry of Labor and Social Security (Provincial Offices of Social Security Institution), Turkish Electricity Distribution Company and OIZ if any. *Id.* The Commission evaluates the applications according to the information provided in the application form and other documents submitted with regard to their conformity to the conditions set by the related legislation. *Id.* If a firm is found eligible, the Commission also determines the rate of energy support to be applied for that firm. *Id.*

Toscelik reported that it received energy subsidies during the POR. *See* Toscelik's August 29 QR at 13. According to Toscelik all energy subsidies received by the Osmaniye facility relate solely to the portion of the Osmaniye facility that produces spiral-welded pipe. *See* Toscelik's January 30 QR at 3. Toscelik points to its August 29 QR and asserts that documentation in Exhibit 12 demonstrates that the benefits from this program are attributable solely to ''spiral energy support deduction,'' *i.e.,* the support for energy expenses relating to the spiral-pipe production facility. *See* Toscelik's January 30 QR at 3. Toscelik further maintains that the investment certificate which is related to the Osmaniye facility is explicitly only related to the spiral pipe production line. *Id.* Moreover, Toscelik asserts that there is no other investment certificate for the other aspects of Toscelik's Osmaniye operation. *Id.*

When a respondent claims that that a subsidy is tied to non-subject merchandise, the respondent must provide evidence to substantiate their claim. We preliminarily determine that the document to which Toscelik cites in Exhibit 12 of its response does not establish a tie between the subsidy and the non-subject merchandise. Furthermore, with respect to the investment certificate cited, we preliminarily determine that the language on the certificate does not indicate that the subsidy in question is linked specifically to spiral pipe. Therefore, as explained above, because Toscelik produces hot-rolled coils at the Osmaniye plant that can be used as an input into the subject merchandise, we preliminarily determine that there is nothing on the record that demonstrates that this program is precluded from benefitting the subject merchandise. *See* ''Law 5084: Withholding of Income Tax on Wages and Salaries'' section above.

In these *Preliminary Results,* we also find that during the period of review, Toscelik benefitted from the energy subsidies under this OIZ program pursuant to section 771(5)(E)(ii) of the Act in that it was able to obtain goods (*i.e.,* electricity) for less than it would otherwise pay in the absence of this subsidy. We also find that this program is regionally-specific under 771(5A)(D)(iv) because it is limited to companies located in the 49 eligible provinces. Moreover, we find that this program constitutes a financial contribution in the form of electricity provided at LTAR within the meaning of section 771(5)(D)(iii) of the Act.

To calculate the benefit from the energy subsidies that Toscelik received under the energy support program, we summed the total amount of energy subsidies reported by Toscelik during the POR and treated it as a non-recurring grant. Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grant over Toscelik's AUL by dividing the approved amount by Toscelik's total f.o.b. sales during the POR. The resulting ratio was less than 0.5 percent of Toscelik's total f.o.b. sales, therefore we allocated the benefit to the POR. On this basis, we preliminarily determine Toscelik's net subsidy rate under this program to be 0.02 percent *ad valorem.*

J. OIZ: Exemption from Property Tax

Toscelik reported that it received an exemption from property tax with respect to its Osmanye facilities because of their location in the OIZ, during the POR. *See* Toscelik's August 29, 2011 QR at 14. In these *Preliminary Results,* we find that during the period of review, Toscelik benefitted from the exemption from property tax under this OIZ program pursuant to Section 771(5)(E)(i) of the Act in the amount of the property taxes that it did not pay. We also find that this program is regionally-specific under 771(5A)(D)(iv) because it is limited to companies located in the OIZ. Moreover, we find that this program constitutes a financial contribution in the form of revenue forgone within the meaning of 19 CFR 351.503(iii) to the extent that it relieves Toscelik of the obligation to pay property taxes that it would have had to pay absent this program.

To calculate the benefit from the tax relief that Toscelik received under the property tax exemption program, we took the total amount of property tax savings reported by Toscelik during the POR and divided the amount of the benefit by Toscelik's total f.o.b. sales during the POR. On this basis, we preliminarly determine Toscelik's net subsidy rate under this program to be 0.01 percent *ad valorem.*

II. Programs Preliminary Determined To Not Confer Countervailable Benefits During the POR

A. Inward Processing Certificate Exemption

Under the Inward Processing Certificate (IPC) [19] program, companies are exempt from paying customs duties and VAT on raw materials and intermediate unfinished goods imported to be used in the production of exported goods. Companies may choose whether to be exempt from the applicable duties and taxes upon importation (*i.e.,* the Suspension System) or have the duties and taxes reimbursed after exportation of the finished goods (*i.e.,* the Drawback System). Under the Suspension System, companies provide a letter of guarantee that is returned to them upon fulfillment of the export commitment. *See* GOT's initial QR at II–41 and II–42.

To participate in this program, a company must hold an IPC, which lists the amount of raw materials/intermediate unfinished goods to be imported and the amount of product to be exported. *See* GOT's initial QR at II–43. The Undersecretariat for Foreign Trade/General Directorate of Exports is the authority responsible for administrating the program. *Id.* at II–40. To obtain an IPC, an exporter must submit an application, which states the amount of imported raw material required to produce the finished products and a ''letter of export commitment,'' which specifies that the importer of materials will use the materials to produce exported goods. *Id.* at II–43. Once an IPC is issued, the producer must show the certificate to Turkish customs each time it imports raw materials on a duty exempt basis. *Id.* There are two types of IPCs: (1) D–1 certificate for imported raw materials or intermediate unfinished goods used in the production of exported goods, and (2) D–3 certificate for imported raw materials or intermediate unfinished goods used in the production of goods sold in the domestic market and defined as ''domestic sales and deliveries considered as exports.'' [20] During the POR, Borusan and Toscelik used D–1 certificates for the importation of raw materials used in the production of exported pipe and tube. No respondent used a D–3 certificate during the POR.[21]

Concerning D–1 certificates, pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input. With regard to the VAT exemption granted under this program, pursuant to 19 CFR 351.517(a), in the case of the exemption upon export of indirect taxes, a benefit exists to the extent that the Department determines that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

In prior reviews, the Department has found that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT has a system in place to confirm which inputs, and in what amounts are consumed in the production of the exported product, and that the system is reasonable for the purposes intended. *See, e.g.,* Turkey Pipe 2004 Decision Memorandum at ''Inward Processing Certificate Exemption'' under ''Programs Determined to Not Confer Countervailable Benefits.'' The Department has also found that the exemption granted on certain methods of payments used in purchasing imported raw materials under this program does not constitute a subsidy pursuant to 19 CFR 351.517(a), because the tax exempted upon export does not exceed the amount of tax levied on like products when sold for domestic consumption. *See* Wire Rod Memorandum at ''Inward Processing Certificate Exemptions'' and Comment 8. No new information is on the record of this review to warrant a reconsideration of the Department's earlier findings.

During the POR, under D–1 certificates, Borusan and Toscelik received duty and VAT exemptions on certain imported inputs used in the production of steel pipes and tubes. *See* Toscelik's Initial Questionnaire Response at Exhibit 16; *see also* Borusan's July 14, 2011, Questionnaire Response at 14. Consistent with the Department's findings in *Turkey Pipe 2004 Final* and based on our review of the information supplied by the respondents regarding this program, we preliminarily determine there is no evidence on the record of this review that indicates the amount of exempted inputs imported under the program were excessive or that the firms used the imported inputs for any other product besides those exported.

Therefore, consistent with past cases,[22] we preliminarily determine that the tax and duty exemptions, which Borusan and Toscelik received on imported inputs under D–1 certificates of the IPC program, did not confer countervailable benefits as each company consumed the imported inputs in the production of the exported product, making normal allowance for waste. We further preliminarily find that the VAT exemption did not confer countervailable benefits on Borusan or Toscelik because the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Further, because Borusan and Toscelik did not import any goods under a D–3 certificate during the POR, we preliminarily determine that this aspect of the IPC program was not used.

B. Investment Encouragement Program (IEP): Customs Duty Exemptions

The GOT provides IEPs that qualified recipients can use to import items duty free. In past CVD proceedings, the Department has repeatedly found this program to be not countervailable because benefits are not specific. *See Certain Welded Carbon Steel Standard Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review, (Turkey Pipe 2008 Preliminary Results), 75 FR 16439, 16443 (April 1, 2010), unchanged in Certain Welded Carbon Steel Standard Pipe from Turkey: Final Results of Countervailing Duty Administrative Review,* 75 FR 44766 (July 29, 2010). However, based on allegations from petitioners in which they alleged changes to the program starting in January 1, 2009, the Department initiated an investigation of this program as it pertains to licenses issued after January 1, 2009. Toscelik and Borusan reported using this program. *See* Toscelik's December 12 QR at 1–2 and January 30 QR at 7 and Exhibit 5; *see also* Borusan's December 12, 2011, at 5. Concerning Toscelik, its use of the program was limited to IEP licenses that it received prior to January 1, 2009. Thus, we preliminarily determine that Toscelik's use of this program did not confer any countervailable benefits during the POR

[19] During the POR, the IPC was implemented under Resolution No. 2005/8391. A copy of this resolution was submitted by the GOT in its June 28, 2011, initial questionnaire response at Exhibit 20.

[20] *See* GOT's Initial Questionnaire Response at 41; *see also* pages 42–43 and Exhibit 20 for additional information on D–3 certificates.

[21] *See* Toscelik's Initial Questionnaire Response at Exhibit 15. *See* Borusan's Initial Questionnaire Response at Exhibit 31.

[22] *See* Turkey Pipe 2004 Decision Memorandum, *Turkey Pipe 2005 Preliminary Results, Turkey Pipe 2006 Preliminary Results,* and *NSR Preliminary Results.*

because the duty exemptions that Toscelik received relate to IEP licenses that the Department has previously determined were distributed in a manner that were not specific. *See Turkey Pipe 2008 Preliminary Results,* 75 FR at16439, 16443 (April 1, 2010).

Concerning Borusan, it reported receiving an IEP license after January 1, 2009, that allowed it to import a piece of equipment at a reduced duty rate. Borusan argues that the receipt of duty exemptions on this license was contingent upon the firm using the equipment to produce spiral welded pipe, which is non-subject merchandise. Upon review of the IEP license in question, we preliminarily determine that the benefit Borusan received on this license was tied to the production of spiral welded pipe at the time of bestowal. *See* Borusan's December 12, 2011, new subsidies allegations questionnaire response at p. 5–7 and Exhibits S3–2 and S3–3. Thus, we preliminarily determine that the benefits Borusan received under this program are tied to non-subject merchandise.

IV. Programs Preliminarily Determined To Not Be Used

We examined the following programs and preliminarily determine that Borusan and Toscelik did not apply for or receive benefits under these programs during the POR:

A. Post-Shipment Export Loans
B. Export Credit Bank of Turkey Buyer Credits
C. Subsidized Turkish Lira Credit Facilities
D. Subsidized Credit for Proportion of Fixed Expenditures
E. Subsidized Credit in Foreign Currency
F. Regional Subsidies
G. VAT Support Program (Incentive Premium on Domestically Obtained Goods)
H. IEP: VAT Exemptions
I. IEP: Reductions in Corporate Taxes
J. IEP: Interest Support
K. IEP: Social Security Premium Support
L. IEP: Land Allocation
M. National Restructuring Program
N. Regional Incentive Scheme: Reduced Corporate Tax Rates
O. Regional Incentive Scheme: Social Security Premium Contribution for Employees
P. Regional Incentive Scheme: Allocation of State Land
Q. Regional Incentive Scheme: Interest Support
R. OIZ: Waste Water Charges
S. OIZ: Exemptions from Customs Duties, VAT, and Payments for Public Housing Fund, for Investments for which an Income Certificate is Received
T. OIZ: Credits for Research and Development Investments, Environmental Investments, Certain Technology Investments, Certain ''Regional Development'' Investments, and Investments Moved from Developed regions to ''Regions of Special Purpose''
U. Provision of Buildings and Land Use Rights for Less than Adequate Remuneration under the Free Zones Law
V. Corporate Income Tax Exemption under the Free Zones Law
W. Stamp Duties and Fees Exemptions under the Free Zones Law
X. Customs Duties Exemptions under the Free Zones Law
Y. Value-Added Tax Exemptions under the Free Zones Law
Z. OIZ: Exemption from Building and Construction Charges
AA. OIZ: Exemption from Amalgamation and Allotment Transaction Charges

Verification

The Department's regulations provide that factual information upon which the Secretary relies for the final results of an administrative review will be verified if a domestic party timely requests verification and the Secretary has not conducted verification during either of the two immediately preceding administrative reviews. *See* 19 CFR 351.307(b)(1)(v). While U.S. Steel timely requested that the Department conduct verification in this review, the Department has conducted verifications of Toscelik and Borusan during both of the immediately preceding administrative reviews. Therefore, in accordance with 19 CFR 351.307(b)(1)(iv)(B), we are not verifying Toscelik and Borusan in this administrative review.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 2010, through December 31, 2010, we preliminarily determine the following total net countervailable subsidy rates: for Borusan is 0.27 percent *ad valorem,* and for Toscelik is 0.35 percent *ad valorem;* these rates are *de minimis,* pursuant to 19 CFR 351.106(c)(1).

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review. If the final results remain the same as these preliminary results, the Department will instruct CBP to liquidate without regard to countervailing duties all shipments of subject merchandise produced by Borusan and Toscelik entered, or withdrawn from warehouse, for consumption from January 1, 2010, through December 31, 2010. The Department will also instruct CBP not to collect cash deposits of estimated countervailing duties on all shipments of the subject merchandise produced by Borusan and Toscelik, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. Those rates shall apply to all non-reviewed companies until a review of a company assigned these rates is completed.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case and rebuttal briefs will be due at the dates specified by the Department. The Department will notify interested parties of the case and rebuttal due dates once those dates are finalized. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(1)(ii), are due. The Department will publish the final

results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: March 26, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–7846 Filed 3–30–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet and Strip From India: Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Toni Page, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1398.

SUPPLEMENTARY INFORMATION

Background

On July 1, 2011, the Department of Commerce (Department) published a notice of opportunity to request an administrative review of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet and strip from India covering the period January 1, 2010, through December 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 38609, 38610 (July 1, 2011). The Department received a timely request from Petitioners [1] for a CVD administrative review of five companies: Ester Industries Limited (Ester), Garware Polyester Ltd. (Garware), Jindal Poly Films Limited of India (Jindal), Polyplex Corporation Ltd. (Polyplex), and SRF Limited (SRF). The Department also received timely requests for a CVD review from Vacmet India Ltd. (Vacmet) and Polypacks Industries of India (Polypacks).

On August 26, 2011, the Department published a notice of initiation of administrative review with respect to Ester, Garware, Jindal, Polyplex, SRF, Vacmet, and Polypacks. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011) (*Initiation Notice*). Prior to the publication of the *Initiation Notice,* Vacmet and Polypacks timely withdrew their requests for an administrative review. On September 20, 2011, the Department published a rescission, in part, of the CVD administrative review with respect to Vacmet and Polypacks. *See Polyethylene Terephthalate Film, Sheet and Strip From India: Rescission, In Part, of Countervailing Duty Administrative Review,* 76 FR 58248 (September 20, 2011).

On September 12, 2011, SRF filed a certification of no shipments and requested that the Department rescind the CVD administrative review of the company. On November 25, 2011, Petitioners timely withdrew their request for CVD administrative reviews of Ester, Garware, Polyplex, and Jindal. The Department published a rescission, in part, of the CVD administrative review with respect to Ester, Garware, Polyplex, and Jindal on January 11, 2012. *See Polyethylene Terephthalate Film, Sheet and Strip From India: Rescission, in Part, of Countervailing Duty Administrative Review,* 77 FR 1668 (January 11, 2012). The administrative review of SRF continued.

Rescission of Review

On February 21, 2012, we published a notice of intent to rescind this CVD administrative review with respect to SRF, and invited interested parties to comment. *See Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Intent to Rescind Countervailing Duty Administrative Review,* 77 FR 9892 (February 21, 2012) (*Intent to Rescind*).

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise to the United States by that exporter or producer. SRF submitted a letter on September 12, 2011, certifying that it did not have any shipments of subject merchandise to the United States during the period of review (POR). The Department received no comments from any other party on SRF's no-shipment claim.

We issued a ''no shipments inquiry'' message to U.S. Customs and Border Protection (CBP), which posted the message on October 12, 2011.[2] We also conducted a CBP data query for this case on October 21, 2011, which we placed on the record.[3] We did not receive any information from CBP to contradict SRF's claim of no sales, shipments, or entries of subject merchandise to the United States during the POR. *See* Memorandum to the File through Barbara E. Tillman, Director, AD/CVD Operations, Office 6, titled ''Claim of No Shipments from SRF Limited in the 2010 Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet and Strip from India,'' dated February 14, 2012. Furthermore, the Department received no comments from parties on the *Intent to Rescind.*

As such, we determine that there were no entries during the POR of subject merchandise produced or exported by SRF. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice,[4] we are rescinding the review for SRF. Because SRF is the sole remaining company in this administrative review, the rescission with respect to SRF results in a rescission of this administrative review in its entirety.

Assessment

The Department will instruct CBP to assess countervailing duties on all appropriate entries. Subject merchandise exported by SRF will be assessed CVDs at rates equal to the cash deposit of estimated CVDs required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their

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[1] Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc. and Toray Plastics (America), Inc.

[2] *See* Message number 1285302, available at *http://addcvd.cbp.gov.*

[3] *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, from Elfi Blum, International Trade Analyst titled ''Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet and Strip from India: Respondent Selection Memorandum,'' dated October 21, 2011.

[4] *See, e.g., Welded Carbon Steel Standard Pipe and Tube from Turkey: Notice of Rescission of Countervailing Duty Administrative Review, In Part,* 74 FR 47921 (September 18, 2009).

responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 27, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–7871 Filed 3–30–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–523–802]

Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are not being provided to producers and exporters of circular welded carbon-quality steel pipe (''circular welded pipe'') from the Sultanate of Oman (''Oman'').

DATES: *Effective Date*: April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Susan Kuhbach, 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) 482–6478 and (202) 482–0112, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the Department of Commerce's (''Department'') notice of initiation in the **Federal Register**. *See Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 76 FR 72173 (November 22, 2011) (''*Initiation Notice*''), and the accompanying Initiation Checklist.

On November 22, 2011, the Department released the U.S. Customs and Border Protection (''CBP'') data on imports of subject merchandise during the period of investigation (''POI''), under administrative protective order (''APO'') to all parties with APO access. *See* Memorandum to the File from Joshua Morris, ''Release of Customs and Border Protection (''CBP'') Data,'' dated November 22, 2011. We received no comments. The CBP data showed two exporters of subject merchandise: Al Jazeera Tube Mills Company SAOG (''Al Jazeera'') and a second company with inconsequential exports because the quantity of exports was extremely small.

On December 16, 2011, the U.S. International Trade Commission (''ITC'') published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of circular welded pipe from India, Oman, the United Arab Emirates, and the Socialist Republic of Vietnam. *See Circular Welded Carbon-Quality Steel Pipe from India, Oman, the United Arab Emirates, and Vietnam*, 76 FR 78313 (December 16, 2011).

On December 19, 2011, the Department postponed the deadline for the preliminary determination in this investigation until March 26, 2012. *See Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 76 FR 78615 (December 19, 2011). In conjunction with this postponement, the Department also postponed the deadline for the submission of new subsidy allegations until February 15, 2012. *See* Memorandum to the File from Joshua S. Morris, ''New Subsidy Allegation Deadline: *Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam*,'' dated December 15, 2011. This memorandum and others referenced in this determination are on file electronically in Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''), with access to IA ACCESS available in the Department's Central Records Unit (''CRU''), room 7046 of the main Department building.

On December 22, 2011, we issued a countervailing duty questionnaire to the Government of the Sultanate of Oman (''GSO'') and to Al Jazeera. We received responses from the GSO and Al Jazeera on February 17, 2012. *See* February 17, 2012 Questionnaire Response of Al Jazeera Steel Products Co. SAOG (''AJ QR'') and February 17, 2012 Questionnaire Response of the Government of the Sultanate of Oman (''GSO QR''). Supplemental questionnaires were sent to the GSO on February 27 and March 1, 2012, and to Al Jazeera on February 27, 2012, and we received responses from Al Jazeera on March 7, 2012, and from the GSO on March 16, 2012. *See* March 7, 2012 Supplemental Questionnaire Response of Al Jazeera Steel Products Co. SAOG (''AJ SQR'') and March 16, 2012 Response of the Government of the Sultanate of Oman to Supplemental Questionnaire and New Subsidies Allegation Questionnaire (''GSO SQR'').

One of the petitioning parties, Wheatland Tube, requested two extensions of the deadline for filing new subsidy allegations. As a result, this deadline was extended from February 15 to February 24, and then to February 28, 2012. *See* Memorandum to the File from Susan Kuhbach, ''New Subsidy Allegation Deadline: *Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam*,'' dated February 6, 2012 and Letter to Interested Parties, dated February 24, 2012.

A new subsidy allegation was received from Wheatland Tube on February 28, 2012. See Letter from Petitioner Wheatland Tube re New Subsidies Allegation and Additional Factual Information, dated February 28, 2012. On March 5, 2012, the Department included the newly alleged subsidy in the investigation. *See* Memorandum: ''New Subsidy Allegations,'' dated March 5, 2012. On March 6, 2012, the Department sent new subsidy allegation questionnaires to Al Jazeera and the GSO and their responses were received on March 13, and 16, respectively. See ''Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Al Jazeera New Subsidies Questionnaire Response,'' dated March 15, 2012 (''AJ NSQR''), and GSO SQR.

We received pre-preliminary comments from Wheatland Tube on March 14, 2012.

Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the POI, is January 1, 2010, through December 31, 2010.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997), and *Initiation Notice*, 76 FR 72173. On December 5, 2011, SeAH Steel VINA Corp. (''SeAH VINA''), a mandatory respondent in the concurrent countervailing duty (''CVD'') circular welded pipe from Vietnam investigation, filed comments arguing that the treatment of double and triple stenciled pipe in the scope of these investigations differs from previous treatment of these products under other orders on circular welded pipe. Specifically, SeAH VINA claims that the Brazilian, Korean, and Mexican orders on these products exclude ''Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil and gas pipelines *–*–* .'' *See, e.g., Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, and Taiwan; and Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Order*, 76 FR 66899, 66900 (Oct. 28, 2011). According to SeAH VINA: (i) If the term ''class or kind of merchandise'' has meaning, it cannot have a different meaning when applied to the same products in two different cases; and (ii) the distinction between standard and line pipe reflected in the Brazil, Korean and Mexican orders derives from customs classifications administered by CBP and, thus, is more administrable.

On December 14, 2011, Allied Tube and Conduit, JMC Steel Group, and Wheatland Tube (collectively, ''certain Petitioners'') responded to SeAH VINA's comments stating that the scope as it appeared in the *Initiation Notice* reflected Petitioners'' intended coverage. Certain Petitioners contend that pipe that is multi-stenciled to both line pipe and standard pipe specifications and meets the physical characteristics listed in the scope (*i.e.*, is 32 feet in length or less; is less than 2.0 inches (50mm) in outside diameter; has a galvanized and/or painted (*e.g.*, polyester coated) surface finish; or has a threaded and/or coupled end finish) is ordinarily used in standard pipe applications. In recent years, certain Petitioners state, the Department has rejected end-use scope classifications, preferring instead to rely on physical characteristics to define coverage, and the scope of these investigations has been written accordingly. Therefore, certain Petitioners ask the Department to reject SeAH VINA's proposed scope modification.

We agree with certain Petitioners that the Department seeks to define the scopes of its proceedings based on the physical characteristics of the merchandise. *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008) and accompanying Issues and Decision Memorandum at Comment 1. Moreover, we disagree with SeAH VINA's contention that once a ''class or kind of merchandise'' has been established that the same scope description must apply across all proceedings involving the product. For example, as the Department has gained experience in administering antidumping duty (''AD'') and CVD orders, it has shifted away from end use classifications to scopes defined by the physical characteristics. *Id.* Thus, proceedings initiated on a given product many years ago may have end use classifications while more recent proceedings on the product would not. *Compare Countervailing Duty Order: Oil Country Tubular Goods from Canada*, 51 FR 21783 (June 16, 1986) (describing subject merchandise as being ''intended for use in drilling for oil and gas'') with *Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 3203 (January 20, 2010) (describing the subject merchandise in terms of physical characteristics without regard to use or intended use). Finally, certain Petitioners have indicated the domestic industry's intent to include multi-stenciled products that otherwise meet the physical characteristics set out in the scope. Therefore, the Department is not adopting SeAH VINA's proposed modification of the scope.

Scope of the Investigation

This investigation covers welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter (''O.D.'') not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, American Society for Testing and Materials International (''ASTM''), proprietary, or other) generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term ''carbon quality'' includes products in which: (a) Iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;
(ii) 2.25 percent of silicon;
(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium;
(xiii) 0.15 percent of vanadium;
(xiv) 0.15 percent of zirconium.

Subject pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications. These products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute (''API'') API–5L specification, is also covered by the scope of this investigation when it meets the physical description set forth above, and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50mm) in outside diameter; has a galvanized and/or painted (*e.g.*, polyester coated) surface finish; or has a threaded and/or coupled end finish.

The scope of this investigation does not include: (a) Pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) finished electrical conduit; (c) finished

scaffolding;[1] (d) tube and pipe hollows for redrawing; (e) oil country tubular goods produced to API specifications; (f) line pipe produced to only API specifications; and (g) mechanical tubing, whether or not cold-drawn. However, products certified to ASTM mechanical tubing specifications are not excluded as mechanical tubing if they otherwise meet the standard sizes (*e.g.*, outside diameter and wall thickness) of standard, structural, fence and sprinkler pipe. Also, products made to the following outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, would not be excluded from the scope based solely on their being certified to ASTM mechanical tubing specifications:

1.315 inch O.D. and 0.035 inch wall thickness (gage 20)
1.315 inch O.D. and 0.047 inch wall thickness (gage 18)
1.315 inch O.D. and 0.055 inch wall thickness (gage 17)
1.315 inch O.D. and 0.065 inch wall thickness (gage 16)
1.315 inch O.D. and 0.072 inch wall thickness (gage 15)
1.315 inch O.D. and 0.083 inch wall thickness (gage 14)
1.315 inch O.D. and 0.095 inch wall thickness (gage 13)
1.660 inch O.D. and 0.047 inch wall thickness (gage 18)
1.660 inch O.D. and 0.055 inch wall thickness (gage 17)
1.660 inch O.D. and 0.065 inch wall thickness (gage 16)
1.660 inch O.D. and 0.072 inch wall thickness (gage 15)
1.660 inch O.D. and 0.083 inch wall thickness (gage 14)
1.660 inch O.D. and 0.095 inch wall thickness (gage 13)
1.660 inch O.D. and 0.109 inch wall thickness (gage 12)
1.900 inch O.D. and 0.047 inch wall thickness (gage 18)
1.900 inch O.D. and 0.055 inch wall thickness (gage 17)
1.900 inch O.D. and 0.065 inch wall thickness (gage 16)
1.900 inch O.D. and 0.072 inch wall thickness (gage 15)
1.900 inch O.D. and 0.095 inch wall thickness (gage 13)
1.900 inch O.D. and 0.109 inch wall thickness (gage 12)
2.375 inch O.D. and 0.047 inch wall thickness (gage 18)
2.375 inch O.D. and 0.055 inch wall thickness (gage 17)
2.375 inch O.D. and 0.065 inch wall thickness (gage 16)
2.375 inch O.D. and 0.072 inch wall thickness (gage 15)
2.375 inch O.D. and 0.095 inch wall thickness (gage 13)
2.375 inch O.D. and 0.109 inch wall thickness (gage 12)
2.375 inch O.D. and 0.120 inch wall thickness (gage 11)
2.875 inch O.D. and 0.109 inch wall thickness (gage 12)
2.875 inch O.D. and 0.134 inch wall thickness (gage 10)
2.875 inch O.D. and 0.165 inch wall thickness (gage 8)
3.500 inch O.D. and 0.109 inch wall thickness (gage 12)
3.500 inch O.D. and 0.148 inch wall thickness (gage 9)
3.500 inch O.D. and 0.165 inch wall thickness (gage 8)
4.000 inch O.D. and 0.148 inch wall thickness (gage 9)
4.000 inch O.D. and 0.165 inch wall thickness (gage 8)
4.500 inch O.D. and 0.203 inch wall thickness (gage 7)

The pipe subject to this investigation is currently classifiable in Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5050, and 7306.50.5070. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the investigation is dispositive.

Alignment of Final Determination

On November 22, 2011, the Department initiated an AD investigation concurrent with this CVD investigation of circular welded pipe from Oman. *See Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 76 FR 72164 (November 22, 2011). The scope of the merchandise being covered is the same for both the AD and CVD investigations. On March 23, 2012, Petitioners submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (''Act''), requesting alignment of the final CVD determination with the final determination in the companion AD investigation. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued on August 6, 2012.

Subsidies Valuation Information

Allocation Period

The average useful life (''AUL'') period in this proceeding, as described in 19 CFR 351.524(d)(2), is 15 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. *See* U.S. Internal Revenue Service Publication 946 (2008), *How to Depreciate Property*, at Table B–2: Table of Class Lives and Recovery Periods. No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) through (v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (''CIT'') has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi, SA* v. *United States*, 166 F. Supp. 2d 593, 600–604 (CIT 2001).

Al Jazeera reported no affiliates in Oman and, consequently, has responded on behalf of itself. (AJ QR at 2–3.) Thus, the subsidies received by Al Jazeera have been attributed to its total sales, its sales of subject merchandise, or its export sales, in accordance with 19 CFR 351.525(b)(1)-(5).

[1] Finished scaffolding is defined as component parts of a final, finished scaffolding that enters the United States unassembled as a ''kit.'' A ''kit'' is understood to mean a packaged combination of component parts that contain, at the time of importation, all the necessary component parts to fully assemble a final, finished scaffolding.

Benchmarks and Discount Rates

Section 771(5)(E)(ii) of the Act states that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient ''could actually obtain on the market'' the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans, the Department ''may use a national average interest rate for comparable commercial loans,'' pursuant to 19 CFR 351.505(a)(3)(ii). According to 19 CFR 351.505(a)(2)(i), a ''comparable'' loan is similar in structure (fixed versus variable interest rate), maturity and currency denomination.

In allocating benefits over time, the Department normally uses as the discount rate the company's cost of long-term fixed rate debt at the time the government approves the subsidy. If such rates are not available, the Department will use the average cost of long-term fixed rate loans in the country in question. *See* 19 CFR 351.524(d)(3).

Al Jazeera had government-provided loans outstanding during the POI for which benchmarks are needed. However, none of Al Jazeera's non-government loans provides a suitable rate because none was taken out in the years the government loans were approved. Therefore, we are relying on the national average cost of long-term fixed-rate loans as reported by the World Bank and submitted by the GSO. (GSO QR at Appendices B.1.I–1 and B.1.I–2.) We have included in the average cost of fixed-rate long-term loans, the additional fees that would be incurred in obtaining loans from commercial banks, as reported by the GSO. (GSO QR at 25.)

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Soft Loans for Industrial Projects Under Royal Decree 17/97

Royal Decree (''RD'') 17/97 made soft loans available to the private sector with the goals of diversifying the economy of Oman and developing industry, agriculture, fisheries, tourism, education, health services, and traditional crafts in Oman. Under this program, applicants approved by the Ministry of Commerce and Industry received loans at three percent interest from commercial banks in Oman, with the difference between the three percent rate and the commercial interest rate covered by the GSO. (GSO QR at 15.) The soft loan program under RD 17/97 originated in 1997 and terminated in 2006. (GSO SQR at 12 and Appendix SQ–20.) Beginning in 2007, soft loans were made by the Oman Development Bank. (GSO QR at 16.) The GSO reported that Al Jazeera had soft loans under the earlier RD 17/97 program outstanding during the POI, but has not received any loans from the Oman Development Bank. (GSO QR at 15.) The two loans outstanding were granted in 1998 and 2004, respectively. (GSO QR at 24.) According to the GSO, both loans have now been repaid in full. (GSO SQR at 12.)

According to the GSO, firms operating the agriculture, fisheries, industry, tourism, education, health and traditional crafts sectors could apply for loans to set up, support or expand a project. (GSO QR at 17.) After review by the relevant ministries, a ministerial committee would approve or disapprove of the loan. (GSO QR at 18.) According to Article 12 of RD 17/97, the maximum amounts that could be approved varied by region (150 percent of paid up capital if the applicant was located in the Governorate of Muscat and 250 percent of paid up capital elsewhere) and by corporate form (a maximum of 500,000 Omani Rial (''OR'') or up to 5,000,000 OR if the applicant was a public joint-stock company which covered at least 40 percent of its capital by public subscription). (GSO QR at 20.)

In response to the Department's request to provide information about the amounts of assistance provided under the program to the different recipients, the GSO provided the aggregate amount of loans approved during the pendency of the program broken out between industry, tourism, education, health, and agriculture/fishing. (GSO QR at Appendix B.1.G–3.) In response to the Department's request for a breakdown of the information among different sectors under the ''industry'' heading, by year, the GSO responded that it does not maintain the information in that manner. Moreover, because there were no sectoral criteria that affect eligibility, the GSO stated there was no requirement to include that information in the applications. (GSO SQR at 15.) The GSO did provide the amounts of individual loans disbursed to recipients in the industrial category. (GSO SQR at Appendix SQ–24.)

We preliminarily determine that the soft loans received by Al Jazeera under RD 17/97 confer a countervailable subsidy. The loans are a financial contribution in the form of a direct transfer of funds and they confer a benefit in the amount of the difference between the interest Al Jazeera paid on the loans and the amount the company would have paid on a comparable commercial loan. *See* sections 771(5)(d)(i) and (e)(ii) of the Act. Additionally, we preliminarily determine that the subsidy was specific, under section 771(5A)(D)(iii)(II) of the Act, because Al Jazeera was a predominant user of the program.

To calculate the benefit, we computed the difference between the amounts Al Jazeera would have paid under the benchmark interest rates described above and the amounts it actually paid during the POI. Because the loans were given to finance Al Jazeera's pipe mills, we divided the subsidy during the POI by Al Jazeera's sales of circular welded pipe during the POI.

On this basis, we preliminarily determine that Al Jazeera received a countervailable subsidy of 0.12 percent *ad valorem* under this program. *See* Memorandum to the File from Sergio Balbontin, ''Preliminary Affirmative Countervailing Duty Determination: Calculation Memorandum for Al Jazeera Steel Products Co. SAOG,'' dated March 26, 2012.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Tariff Exemptions on Imported Equipment, Machinery, Raw Materials, and Packaging Materials

Under RD 61/2008, industrial enterprises in Oman are able to import machinery, equipment, parts, raw materials, semi-manufactured materials and packing material duty free. According to the GSO, the purpose of RD 61/2008 is to encourage and develop all industrial projects, to raise the contribution of the industrial sector in the gross domestic product, and to expand the bases of economic linkage in the Arab States of the Gulf. RD 61/2008 supersedes similar earlier schemes under the Organization and Promotion of Industry Law (RD 1/79) and the Foreign Business Investment Law (102/94). (GSO QR at 4 and Appendix A.1.D–1.)

RD 1/79 entered into force on January 4, 1979. According to the GSO, the purpose of this law was to encourage diversification of the Omani economy and to stimulate industrial development. (GSO SQR at 1.) Under Article 19 of RD 1/79, licensed or

registered industrial enterprises were exempted from customs duties on equipment, tools, spare parts, raw materials, and semi-manufactured goods. (GSO SQR at Appendix SQ–3.)

Both RD 61/2008 and RD 1/79 provide similar definitions of the ''industrial enterprises'' that are eligible to receive the tariff exemptions: establishments whose basic objective is to convert raw materials or semi-manufactured goods into manufactured goods. (GSO QR at Appendices A.1.D–1 and GSO SQR at Appendix SQ–3.) Also, both decrees outline the process for receiving an industrial license. Under RD 61/2008, the procedure for obtaining an industrial license is ''automatic,'' according to the GSO, upon submission of the required documentation (commercial registration, business plan and approval from the Ministry of Environment). Further, the GSO states that there is no discretion in the procedure, as the application process has been fully automated through a ''one stop shop'' IT system. (GSO QR at 8.)

Al Jazeera's industrial license was obtained under RD 1/79, as well as its initial tariff exemption. According to Article 5 of RD 1/79, industrial enterprises could not be established or change their capacity, size, purpose or site without obtaining an industrial license from the Ministry of Commerce and Industry. To obtain an industrial license, companies would submit an application to the Ministry. This application requested a wide range of information including: a list of shareholders, estimated investment, a description of the products to be produced, annual output, a description of the manufacturing process, the numbers and types of labor required, market and marketing information (imports of the product, domestic production of the product, exports, and proposed distribution channels), details of plant and machinery, raw materials requirements, and utilities requirements. (GSO QR at Appendix A.1.G–6.) The decision of whether to grant the industrial license rested with the Directorate General of Industry (Ministry of Commerce and Industry). (GSO SQR at Appendix SQ–3.) According to the GSO, the Ministry relied upon non-binding guidelines for granting these licenses. (GSO SQR at 2.)

To obtain the tariff exemption under RD 1/79, the industrial enterprise would submit to the Ministry of Commerce and Industry its industrial license along with a list of the materials and equipment it intended to import and the annual amounts. (GSO SQR at 2 and Appendix SQ–4.) The procedure under RD 61/2008 is similar except that final approval of the Ministry of Finance is also required in order to ensure that the application conforms with the uniform customs law of the Arab Gulf Cooperation Council. (GSO SQR at 3 and Appendix SQ–6.) RD 61/2008 also provides at Article 16 that priority in granting the tariff exemptions will be given, *inter alia*, to enterprises producing goods for exports. (GSO QR at Appendix A.1.D–1.)

As noted above, Al Jazeera received its industrial license and initial tariff exemption under RD 1/79. According to the GSO, if a company needs to import raw materials in excess of the amount for which the exemption was granted, it must file a new request with the Ministry of Commerce and Industry. (GSO QR at 6.) Al Jazeera received a new approval under RD 61/2008. (GSO QR at 11.)

The GSO states that processes for granting industrial licenses in Oman are ''automatic.'' Regarding the former, companies apply though an online system administered by the Ministry of Commerce and Industry. According to the Ministry of Commerce and Industry, no firm that met the legal and regulatory requirements for an industrial license has been denied a license. (GSO QR at Appendix A.1.G–4 and GSO SQR at 6.) Specifically, rejections of license applications occur only when the applicant does not constitute an ''industrial enterprise,'' or when the applicant cancels its plans and does not complete the steps for registration. (GSO QR at 8.)

In its pre-preliminary comments, Wheatland Tube points to Al Jazeera's application for its industrial license and, in particular, the section of the application that requests information about exports. Citing 19 CFR 351.514 and prior findings by the Department,[2] Wheatland Tube argues that the application by its terms renders the tariff exemptions an export subsidy. We preliminarily disagree. The application cited by Wheatland Tube is the application for an industrial license which, while necessary for the tariff exemption, is not in itself a subsidy program. Instead, as explained above, an industrial license is required to start, expand, or relocate any enterprise that converts raw materials or semi-manufactured goods into manufactured goods. Thus, while we acknowledge our regulation, which looks to whether exportation or anticipated exportation is a condition for receipt of benefits under a program, and our past determinations in which we have found export contingency when an application for a subsidy required information on the firm's exports, we do not agree that such questions on an application for something as fundamental as an industrial license necessarily means that a separate subsidy program is specific as an export subsidy. Therefore, we have focused our analysis on the procedures for obtaining the tariff exemptions.

As explained above, applications for tariff exemptions are filed with the Ministry of Commerce and Industry. According to the GSO, the approval process for duty exemptions is automatic and does not take into account the export performance or potential of the applicant, the use of domestic over imported goods, the industry or sector in which the applicant operated, or the location of the applicant. (GSO QR at 9–10 and GSO SQR at 4–5.) More recently, the tariff exemptions application has also been referred to the Ministry of Finance, which carries out a formal check of whether the applicant corresponds to the company named in the industrial license, whether the capital goods pertain to the activity of the company, and whether the quantity the applicant seeks to import is consistent with its output. (GSO QR at 6.) The GSO states that there is no discretion in deciding whether to grant the duty exemption when the regulations are met (GSO QR at 6–7) and that no qualifying companies have been denied tariff exemptions. (GSO QR at Appendix A.F.1–2 and GSO SQR at 6.) The submitted data shows that hundreds of approvals are made per year. (GSO SQR at Appendix SQ–5.) The GSO further explains that the ''priority'' described in Article 16 of RD 61/2008 for granting tariff exemptions to certain enumerated sectors means that if two or more applications were filed contemporaneously, the enterprise in the designated sector would receive the tariff exemption prior to the other applicants. (GSO QR at 7–8.)

In response to the Department's request to provide information about the amounts of assistance provided under the program to the different industries in Oman, the GSO explained that it does not maintain this data. Specifically, recipients of the import duty exemptions are not classified by the International Standard Industrial Classification. (GSO SQR at 6.) Nor does the GSO maintain information on the

[2] *See, e.g., Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521, 18524 (April 4, 2011), and *Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011).

duties it would have collected but for the exemption. (GSO SQR at 7.)

In summary, based on information submitted by the GSO, the tariff exemptions are granted automatically and without regard to the firm's export performance or potential, use of domestic over imported goods, industry sector or location. Moreover, hundreds of applications are approved in a year and no applications have been rejected. The GSO has explained that it is not able to provide information regarding the distribution of duty exemptions because of the nature of the benefit (exemptions) and the manner in which the recipients submit their data.

On this basis, we preliminarily determine that the GSO's program providing tariff exemptions on imported raw materials and equipment does not confer a countervailable subsidy because it is not specific within the meaning of section 771(5A) of the Act. At verification, we intend to examine the applications and the approval process to confirm that the tariff exemptions are, in fact, used by industries producing a wide variety of products. Also, we invite the parties to comment on the distinction we have made in this preliminary determination to focus on the application process for benefits under the tariff exemption program rather than on the application for the company's industrial license.

Provision of Electricity for Less Than Adequate Remuneration (''LTAR'')

The provision of electricity to consumers in Oman is heavily regulated. (GSO QR at Appendix C.1–5 at 15.) In particular, in accordance with Article 10 of RD78/2004, the rates that are charged for electricity are approved by the Council of Ministers. (GSO QR at Appendix C.1–1.) During the POI, all industrial users in all regions of Oman paid uniform rates. (GSO QR at 37.) To be eligible for the industrial user rate, a company must have a letter of recommendation from the Ministry of Commerce and Industry and meet a stipulated power factor. (GSO QR at Appendix C.1–3 at 37.) According to the GSO, letters of recommendation are given to all companies with an industrial license. (GSO QR at 39.) During the POI, there were over 1.5 million industrial users of electricity in Oman. (GSO QR at Appendix C.1–3 at 10.)

The electricity bills submitted by Al Jazeera show that it paid the established rates. (AJ QR at Exhibit 13.)

Because all industrial users pay the same rates for electricity, we preliminarily determine that any potential subsidy related to the GSO's provision of electricity is not specific within the meaning of section 771(5A) of the Act.

C. Provision of Water for LTAR

Ministerial Decision 11/2000 establishes a uniform water tariff for all commercial users in Oman. (GSO QR at Appendix C.2–1.) The water bills submitted by Al Jazeera show that it paid the established rates. (AJ QR at Exhibit 14.)

Because all commercial users pay the same tariff for water, we preliminarily determine that any potential subsidy related to the GSO's provision of water is not specific within the meaning of section 771(5A) of the Act.

D. Provision of Natural Gas for LTAR

According to the GSO, the Ministry of Oil and Gas is the central buyer and seller of gas in the Sultanate. The Ministry buys gas from producers and resells it to power plants, industrial estates, and LNG producers. Further, according to the GSO, the natural gas network delivers gas for industrial purposes only and companies using gas for industrial purposes must be located in or close to an industrial estate. (GSO QR at 43.)

The GSO states that virtually all industries in Oman are located in industrial estates or free trade zones. (GSO QR at 33.) This is due in part to infrastructural constraints, such as the fact that natural gas is not readily available outside of these areas. Additionally, according to the GSO, the zoning in the Sultanate is very strict: an industry seeking to locate outside an industrial estate or free trade zone would have to apply to have the land reclassified as industrial land. Id. Finally, industrial estates serve as ''one-stop-shops'' where all the applications for an industrial installation can be made, rather than having to apply to many different agencies. *Id.*

Regarding natural gas, all industrial companies located in all of industrial estates pay the same rate. (GSO QR at 42.) Al Jazeera is located in the Sohar Industrial Estate and the natural gas bills it submitted show that it paid the standard rate charged to all industries located in Sohar Industrial Estate and all other industrial estates. (AJ QR at Exhibit 15.) Companies located nearby, but outside of industrial estates normally purchase gas from the Ministry of Oil and Gas, but are supplied by the industrial estates. According to the GSO, these companies would normally pay the same for natural gas as companies within the industrial estates, but might pay more if the cost of providing the gas was higher due, for example, to having constructed a pipeline. (GSO SQR at 13.)

Because all industrial users proximate to the gas pipeline pay the same price for natural gas, we preliminarily determine that any potential subsidy related to the GSO's provision of natural gas is not specific within the meaning of section 771(5A) of the Act.

E. Provision of Land and/or Buildings for LTAR

As explained above under ''Provision of Natural Gas for LTAR,'' the GSO states that virtually all industries in Oman are located in industrial estates or free trade zones. These estates and zones have been established on government-owned land and are managed by the Public Establishment for Industrial Estates. (GSO QR at 33.) A small number of very large industrial companies, established by the GSO, are located outside the industrial estates on government-owned land, but the GSO does not provide land under lease outside of the industrial estates. (GSO SQR at 13.)

Privately owned ''industrial land'' outside of the estates differs from land in the estates, according to the GSO. (GSO SQR at 14.) The plots cannot exceed 85 square meters and rental periods are shorter than those in the estates (which range about 25 years). (GSO SQR at 14.) Companies located outside the estates are small workshops such as carwashes and welders which cannot rent land in the industrial estates because they are not industrial establishments per RD 61/2008. *Id.* The lease rates for these plots are set by the market and, according to the GSO, possibly range around .50 OR per square meter/month. Also according to the GSO, no land in the vicinity of the Sohar industrial estate (where Al Jazeera is located) is provided under lease to industrial establishments by private parties. *Id.*

Regarding lease rates in the industrial estates, the GSO reports that they are set taking into account the location of the industrial estate and lease rates in neighboring countries. *Id.* Lease rates in the Sohar and Rusayl Industrial Estates are uniform at 0.5 OR per square meter per year, while the lease rates in effect for the five other industrial estates maintained by the GSO are 0.25 OR per square meter per year for the first five years and 0.5 OR per square meter per year thereafter. (GSO SQR at Appendix SQ–23.) Lease rates in the free trade zones are typically higher, ranging from 1.5 to 2.5 OR per square meter per year. (GSO SQR at 15.)

According to the GSO, these higher prices reflect additional services and

benefits available in the free trade zones: one stop shop for industrial license and work permits, and various regulatory and policy exemptions. If the land in the free trade zone is not developed, the lease rates may be lower. *Id*.

In summary, the GSO provides industrial land under leases in industrial estates and free trade zones. Companies locating in free trade zones receive benefits or services that are not received in the industrial estates and the lease rates in free trade zones are, therefore, higher. Within the industrial estates, the rates are uniform except for the existence of ''introductory'' rates in certain zones. Because Al Jazeera has been located in Sohar Industrial Estate beyond any ''introductory'' period in the other industrial estates, it would face the uniform rate of 0.50 OR.

Because all recipients of industrial leases in the industrial estates that have been located there beyond five years pay the same lease rates, we preliminarily determine that any potential subsidy related to the GSO's provision of industrial leases is not specific within the meaning of section 771(5A) of the Act.

III. Programs Preliminarily Determined To Be Not Used By Respondents or To Not Provide Benefits During the POI

A. Exemption from Corporate Income Tax

Based on information included in Al Jazeera's questionnaire response, Wheatland Tube alleged that Al Jazeera benefitted from a countervailable exemption from income tax during the POI. Al Jazeera's response indicates that the company has a tax loss for 2009 (relating to the tax return filed during the POI) (AJ SQR at 5) and did not belatedly pay corporate income taxes in 2009 for prior years. (AJ NSQR at 2.) Therefore, we preliminarily determine that any income tax exemption was not used during the POI.

B. Pre-Shipment Export Credit Guarantees

IV. Programs For Which More Information Is Required

A. Export Credit Discounting Subsidy (identified as ''Post-Shipment Financing Loans'' in the Initiation Notice)

The Export Credit Guarantee Agency of Oman (''ECGA'') is the national export credit agency of the Sultanate. Exporters whose sales are insured by ECGA can discount their export bills with commercial banks and ECGA provides a one percent subsidy on the export sales it has insured. (GSO QR at 26.) Al Jazeera received an interest subsidy for a loan outstanding during the POI. (AJ QR at 13–14.) However, the interest subsidy for this loan was received after the POI. (AJ SQR at 4.) Consequently, the interest subsidy does not give rise to a benefit during the POI.

We intend to seek further information from Al Jazeera regarding possible interest subsidies received during the POI arising from loans outstanding prior to the POI.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Preliminary Negative Determination

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an estimated countervailable subsidy rate for Al Jazeera. Further, because Al Jazeera is the only company for which a rate has been calculated, we are also assigning that rate to all other producers and exporters of circular welded pipe from Oman.

Exporter/manufacturer	Net subsidy rate
Al Jazeera Tube Mills Company SAOG.	0.12 percent
All Others	0.12 percent

Because all of the rates are *de minimis*, we preliminarily determine that no countervailable subsidies are being provided to the production or exportation of circular welded pipe from Oman. As such, we will not direct CBP to suspend liquidation of entries of the subject merchandise.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 75 days after the Department makes its final affirmative determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we intend to disclose to the parties the calculations for this preliminary determination within five days of its announcement. Due to the anticipated timing of verification and issuance of verification reports, case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c)(i) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. See 19 CFR 351.309(c)(2) and (d)(2).

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must electronically submit a written request to the Assistant Secretary for Import Administration using IA ACCESS, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. *See id*.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: March 26, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–7839 Filed 3–30–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Low Enriched Uranium From France: Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department published the preliminary results of a changed circumstances review of the antidumping duty order on low enriched uranium (LEU) from France on February 10, 2012,[1] in which the Department preliminarily determined that it is appropriate to issue, for this entry only, an amendment to the scope of the order to extend by 18 months the deadline otherwise applicable to Eurodif S.A. and AREVA NP Inc. (collectively, AREVA), for the re-exportation of one entry of LEU. We invited parties to comment. Based on comments submitted by the parties, the Department is making no changes to the *Preliminary Results.*

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Emily Halle or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0176 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 2002, the Department published an antidumping order on LEU from France.[2] The order contains a provision that excludes, from the scope of the order, LEU owned by a ''foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.''

As for evaluating AREVA's request, the Department published, in accordance with sections 751(b)(1) and (d)(1) of the Tariff Act of 1930, as amended (Act), and 19 CFR 351.216, the *Preliminary Results,* in which we determined that the evidence provided by AREVA is sufficient to establish that the circumstances of its request are extraordinary, and beyond the control of AREVA and the Japanese end-user. Therefore, we preliminarily determined that it was appropriate, for this entry only, to amend the scope of the order and to extend the deadline for the re-exportation of this sole LEU entry from 18 months to 36 months. We invited parties to comment on the *Preliminary Results.* On February 17, 2012, AREVA timely submitted a letter in support of the Department's *Preliminary Results.* On February 24, 2012, USEC Inc. and United States Enrichment Corporation (collectively, USEC), timely submitted a letter indicating that it had no objection to the Department's *Preliminary Results* and proposing language to be used in amending the certifications that are required to be filed with U.S. Customs and Border Protection (CBP) by parties involved in re-exportation of LEU.

Scope of the Order

The product covered by the order is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of the order. Specifically, the order does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of the order. For purposes of the order, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of the order.

Also excluded from the order is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Final Results of Changed Circumstances Review

Because no parties have submitted comments opposing the Department's *Preliminary Results,* and because there is no other information or evidence on the record that calls into question the *Preliminary Results,* the Department determines that the deadline for re-exportation of this sole entry should be extended by 18 months, to no later than November 1, 2013. AREVA and the end-user will be required to amend the certifications they provided to CBP at the time of importation, prior to the original deadline for re-exportation of this entry, *i.e.,* May 1, 2012. In its comments, USEC proposed language for amending the certifications the Department is requiring AREVA and its end-user to provide. The Department agrees with USEC's recommendation, and will issue such instructions to CBP for implementation.

Instructions to CBP

The Department will inform CBP that the deadline for re-exportation of this single entry only is extended to November 1, 2013. The Department will instruct CBP to collect amended certifications from AREVA and its end-user by May 1, 2012.

Notification

This notice serves as a reminder to parties subject to administrative

[1] *See Low Enriched Uranium from France: Preliminary Results of Antidumping Duty Changed Circumstances Review,* 77 FR 7128 (February 10, 2012) (*Preliminary Results*).

[2] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Low Enriched Uranium From France,* 67 FR 6680 (February 13, 2002).

protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and notice in accordance with sections 751(b) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: March 26, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–7868 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* April 1, 2012.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998), and in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–570–866	731–TA–921	China	Folding Gift Boxes (2nd Review)	Jennifer Moats, (202) 482–5047
A–428–820	731–TA–709	Germany	Seamless Pipe and Pressure Pipe (3rd Review).	Dana Mermelstein, (202) 482–1391

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statue and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules can be found at 19 CFR 351.303.

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*'') amending 19 CFR 351.303(g)(1) and (2) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must

respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: March 22, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–7863 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 2, 2012.

SUMMARY: The Department of Commerce (the Department) initiated a new shipper review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (PRC) for the period of June 1, 2011, through February 29, 2012. As discussed below, we determine that the producer and exporter Puyang Cleanway Chemicals Ltd. (Puyang Cleanway) did not satisfy the regulatory requirements to request a new shipper review; therefore, we are rescinding this new shipper review.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION

Background

The antidumping duty order on chlorinated isos from the PRC was published on June 24, 2005. *See Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People's Republic of China,* 70 FR 36561 (June 24, 2005). On December 30, 2011, the Department received a timely request for a new shipper review (NSR) from Puyang Cleanway in accordance with 19 CFR 351.214(c) and 19 CFR 351.214(d). On January 31, 2012, the Department initiated the NSR. *See Chlorinated Isocyanurates From the People's Republic of China: Initiation of New Shipper Review,* 77 FR 5773 (February 6, 2012) (*Initiation Notice*).

Period of Review

Usually, in accordance with 19 CFR 351.214(g)(1)(i)(B), the period of review (POR) for new shipper reviews initiated in the month immediately following the semi-annual anniversary month is the six-month period immediately preceding the semiannual anniversary month (in this instance, June 1, 2011, through November 30, 2011). Puyang Cleanway's sale, which took place in November of the POR, had not yet entered by the end of the standard regulatory POR. The Department, however, has in the past extended a POR forward to capture entries for sales made during the POR that have not yet entered during the POR specified by the Department's regulations. Therefore, consistent with 19 CFR.214(f)(2)(ii), the Department stated, in the *Initiation Notice,* that it was extending the POR for the NSR forward to allow Puyang Cleanway to enter this sale. We stated that in no case, however, would we extend the POR past February 29, 2012. This decision allowed Puyang Cleanway more than three months to enter its November shipment.

Scope of the Order

The products covered by the order are chlorinated isocyanurates (chlorinated isos), which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3(2H_2O)$, and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isos are available in powder, granular, and tableted forms. The order covers all chlorinated isos.

Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isos and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Rescission of the Antidumping Duty New Shipper Review of Puyang Cleanway

In the *Initiation Notice,* the Department extended the POR to allow Puyang Cleanway to complete entry of its sale of subject merchandise. The Department stated in the *Initiation Notice* that, if this sale had not yet entered by February 29, 2012, the Department intended to rescind this NSR. The Department contacted Puyang Cleanway's counsel regarding this entry and received no indication that the

shipment had entered the country. *See* Memorandum to the File, ''Information Regarding Entries of Subject Merchandise During the Period of Review,'' March 16, 2012. Entry data requested from U.S. Customs and Border Protection (CBP) does not indicate that this shipment has entered the country. *Id.* Because Puyang Cleanway has not demonstrated that this sale has entered the United States, there is no basis for conducting an NSR since there must be a suspended entry in order for the Department to conduct the review. Therefore, we are rescinding the NSR of Puyang Cleanway.

Assessment Rates

Any entries of exports made by Puyang Cleanway will be subject to the PRC-wide rate. The Department is currently conducting an administrative review for the POR, June 1, 2010, through May 31, 2011, in which the PRC-wide rate is under review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocations in Part and Deferral of Administrative Reviews,* 76 FR 45227 (July 28, 2011). We will instruct CBP to assess antidumping duties on entries exported by Puyang Cleanway at the appropriate PRC-wide rate determined in the 2010–2011 administrative review. Because there were no suspended entries at the time of initiation, no bonding option instructions were sent to CBP at the initiation of this NSR; therefore the Department does not need to issue instructions to CBP no longer allowing posting a bond in lieu of cash-deposit, as is typically done when an NSR is rescinded.

Notification Regarding Administrative Protective Orders

This notice is the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f)(3).

March 26, 2012.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–7843 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA626

Marine Mammals; File No. 16111

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given John Calambokidis, Cascadia Research Collective, Waterstreet Building, 218 ½ West Fourth Avenue, Olympia, WA 89501, has applied in due form for a permit to conduct research on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before May 2, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16111 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION**.

Written comments on these applications should be submitted to the Chief, Permits, and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Laura Morse at (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Mr. John Calambokidis requests a five-year permit to study cetaceans and pinnipeds in the eastern North Pacific, from Central America to Alaska. The research is a continuation of long-term studies designed to examine marine mammal abundance, distribution, population structure, habitat use, social structure, movement patterns, diving behavior, and diet. The proposed project would also assess the impact of human activities such as ship strikes, noise exposure, contaminants, and fishery interactions on marine mammals. Focal species are blue (*Balaenoptera musculus*), fin (*B. physalus*), humpback (*Megaptera novaeangliae*), eastern gray (*Eschrichtius robustus*), sperm (*Physeter macrocephalus*), and beaked (*Mesoplodon* spp.) whales. An additional 15 cetacean species and five pinniped species would also be studied, including the endangered sei whale (*B. borealis*), endangered Southern Resident stock of killer whales (*Orcinus orca*), and the threatened eastern stock of Steller sea lions (*Eumetopias jubatus*). Aerial surveys would be conducted to study abundance and distribution, and to track tagged animals. Ground surveys would consist of population counts and scat collection to study harbor seals (*Phoca vitulina*) and other pinnipeds at haul-out areas in Puget Sound and throughout Washington. Vessel surveys would include photo-identification, behavioral focal follows, underwater observations and filming, hydroacoustic prey determination, passive acoustic recording, breath sampling, biopsy sampling, collection of sloughed skin, and attachment of suction cup and dart tags. Tags would provide a variety of information such as video images, acoustic recordings, movement data, and physiology information.

A draft environmental assessment (EA) has been prepared in compliance with the National Environmental Policy

Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. The draft EA is available for review and comment simultaneous with the permit application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations: Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249; and Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Dated: March 28, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–7859 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB139

Marine Mammals; File No. 17178

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Virginia Institute of Marine Science [Responsible Party: Elizabeth Canuel, Ph.D.], P.O. Box 1346, Route 1208 Greate Road, Gloucester Point, VA 23062, has applied in due form for a permit to import marine mammal parts for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before May 2, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 17178 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; 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, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 17178 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Amy Sloan, (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The objective of the proposed research is to use chemical signals to provide insight into the dietary preferences and feeding ecology of Antarctic marine mammals by analyzing seal and whale samples for persistent organic pollutants, mercury, and stable isotopes. The following archived samples will be imported from the Swedish Museum of Natural History: fur, blood, and fat biopsies from up to 300 crabeater seals (*Lobodon carcinophaga*), 200 Weddell seals (*Leptonychotes weddellii*), 50 Ross seals (*Ommatophoca Rossii*), and 25 leopard seals (*Hydrurga leptonyx*) that were collected in Antarctica in 1987–1988, 2008–2009, and 2010–2011. The requested duration of the import permit is 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 27, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–7869 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB127

International Whaling Commission; 64th Annual Meeting; Nominations

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

ACTION: Notice; request for nominations.

SUMMARY: This notice is a call for nominees for the U.S. Delegation to the July 2012 International Whaling Commission (IWC) annual meeting. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations. Generally, only one non-governmental position is selected for the U.S. Delegation.

DATES: The IWC is holding its 64th annual meeting from July 2–6, 2012, at the El Panama Hotel in Panama City, Panama. All written nominations for the U.S. Delegation to the IWC annual meeting must be received by May 7, 2012.

ADDRESSES: All nominations for the U.S. Delegation to the IWC annual meeting should be addressed to Ms. Monica Medina, U.S. Commissioner to the IWC, and sent via post to: Melissa Andersen, National Marine Fisheries Service, Office of International Affairs, 1315

East-West Highway, SSMC3 Room 10876.2, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Melissa Andersen at *Melissa.Andersen@noaa.gov* or 301–427–8385.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the domestic obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. IWC Commissioner has responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. The U.S. IWC Commissioner is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other agencies. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations. Generally, only one non-governmental position is selected for the U.S. Delegation.

Dated: March 28, 2012.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2012–7852 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB128

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) is hosting the Council Coordination Committee (CCC) meeting on Tuesday May 1, 2012 through Thursday May 3, 2012, in Hawaii. The purpose of the meeting is to enable NMFS and NOAA officials and others to exchange information with the Regional Fishery Council Chairs and Executive Directors.

DATES: The CCC general meeting session will be held on May 1, 2012, from 1:30 p.m. to 5:30 p.m., May 2, 2012 from 8 a.m. to 4 p.m. and on May 3, 2012 from 8 a.m. to 6 p.m. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The CCC meeting will be held at the Mauna Lani Bay Hotel Ballroom, 68–1400 Mauna Lani Drive, Big Island, HI 96743; telephone: (808) 885–6622.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The agenda for the CCC general session meeting will include the items listed here. The order in which agenda items are addressed may change. The CCC will meet as late as necessary to complete scheduled business.

Schedule and Agenda for the CCC Meeting

1:30 p.m.– 5:30 p.m., Tuesday, May 1, 2012

1. Welcome and Introductions.
2. Opening Remarks.
3. Remarks from the Governor.
4. Council Reports on Status of Implementing Magnuson-Stevens Act (MSA) Provisions and Other Current Activities of Interest.

8 a.m.–4 p.m., Wednesday, May 2, 2012

5. Panel Presentation and Discussion on Endangered Species Act Jeopardy Determination in Fisheries Management—Past, Present and Future.
6. Panel Discussion.
7. Litigation.
   a. Regional Fishery Management Council Counsel Representation.
   b. Update on Lawsuits.
8. Stock Assessments.
   a. Next Generation Stock Assessments and Priorities.
   b. Fisheries and the Environment (FATE).
   c. Advanced Technology.
   d. National Scientific and Statistical Committee (SSC) IV Recommendations.
   e. Use (or lack thereof) of Best Available Science.
   f. Allocating Resources to Support Assessments.
9. Bycatch, Cooperative Research, Habitat, 5-year Council Research Plan—Funding Opportunities for These Programs.
10. Report on the Success of MPAs for Fisheries.
11. President Obama's Executive Order on Improving Regulations and Regulatory Review (E.O. 13563).

8 a.m.–6 p.m., Thursday, May 3, 2012

12. Report on Legislation.
13. Administration's Activities on Coastal and Marine Spatial Planning and the National Ocean Council.
14. Marginalization of Fisheries Through Competing Acts/Authorities.
15. Communities and Indigenous Issues.
16. International Fisheries Management.
   a. Leveling the Playing Field for Domestic Fisheries.
   b. Increasing Domestic Production to Reduce Trade Deficits.
   c. Bilateral Agreements (Mexico, Canada, Others).
17. Budgets.
   a. FY2012 Status of Council Funding.
   b. FY2013 Update.
18. Communications.
   a. NOAA Fisheries Activities.
   b. Regional Fishery Management Council Coordination Committee Recommendations.
   c. Managing Our Nations Fisheries 3.
19. Program Review.
   a. Department of Commerce Inspector General Review of NOAA Fisheries and Fishery Management Councils in Fishery Rule Making Process and Transparency of Rule Making Process under MSA.
   b. Mid-Atlantic Fishery Management Council Visioning Project.
20. Administrative Matters.
   a. Freedom of Information Act Requests.
   b. Technology—Virtual Public Hearings/Scoping versus Travel.
   c. Professional Liability.
   d. Other Business and Next Annual CCC Meeting.
21. Adjourn Meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220

(voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: March 28, 2012.

William D. Chappell,

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

[FR Doc. 2012–7858 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA599

Marine Mammals; File No. 16094

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game, Juneau, AK, has applied for an amendment to Scientific Research Permit No. 16094.

DATES: Written, telefaxed, or email comments must be received on or before May 2, 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. 16094 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Joselyd Garcia-Reyes, (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 16094 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 16094, issued on September 20, 2011 (76 FR 61345), authorizes the permit holder to take harbor seals (*Phoca vitulina*) during aerial surveys for population census and radio tracking; ground surveys for photo-identification, counts and behavioral observations; vessel approaches of animals equipped with telemetry equipment; vessel surveys for radio tracking; and capture by entanglement in a net in the water or by hoop net or dip net on land. Captured animals will: be restrained (chemical or physical); be weighed and measured; have biological samples collected (blood, milk (lactating females), blubber, skin, muscle, hair, mucus membrane swabs, stomach lavage, tooth and vibrissae); be administered deuterated water; have measurement of blubber via ultrasound; be marked with flipper identification tags; and have internal (PIT tags) or external scientific instruments attached. Tissue samples will be collected from subsistence harvested animals and other mortalities and some samples will be exported to Canada for analysis. The permit also includes incidental harassment and accidental mortality of harbor porpoises (*Phocoena phocoena*) during seal capture activities. The permit is valid through December 31, 2016.

The permit holder is requesting the permit be amended to include authorization for takes related to a whisker growth and replacement study aimed at improving utility of dietary stable isotope information derived from whiskers. The amendment would increase the number of whiskers that may be collected from seals captured during field work from 1 per animal to 2 per animal, and add photogrammetry for these seals. There would be no increase in the numbers of seals captured or sampled in the wild. The amendment would also add a non-invasive study using captive seals held at the Alaska SeaLife Center in Seward, AK. For that study, researchers would use hair dye to mark the seals' whiskers and photo document whisker growth over time.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 27, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–7847 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB144

[Endangered Species; File No. 13330]

Receipt of Application for a Permit Modification

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

ACTION: Notice; receipt of application for a permit modification.

SUMMARY: Notice is hereby given that NMFS Southeast Fisheries Center (SEFSC) (hereinafter ''Permit Holder''); 75 Virginia Beach Drive, Miami, FL 33149 [Responsible Party: Bonnie Ponwith, Ph.D.], has requested a modification to scientific research Permit No. 13330–01.

DATES: Written, telefaxed, or email comments must be received on or before May 2, 2012.

ADDRESSES: The modification request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/,* and then selecting File No. 13330 from the list of available applications. These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910;

phone (301)427–8401; fax (301)713–0376; and

Southeast Region, NMFS, 263 13th Ave. South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Malcolm Mohead, (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 13330–01, is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 13330–01, issued on March 17, 2011 (76 FR 14650), authorizes the permit holder to: Capture 45 smalltooth sawfish (15 from each of three life stages) annually by longline, gillnet, seine net, drum (set) lines, or rod and reel throughout Florida's coastal waters, but primarily in the region of the Florida coast from Naples to Key West, encompassing the Ten Thousand Islands. All captured sawfish are measured, tagged, sampled, and released. Current tagging methods include rototags (fin tags), dart tags, umbrella dart tags, Passive Integrated Transponder (PIT) tags, acoustic transmitters, and Pop-Up Archival Transmitting (PAT) tags. Tissue and blood samples are also taken. The permit holder now requests authorization for an increase in take numbers to 50 individuals from each of the three life stages (neonates, juveniles, and adults) for a total of 150 smalltooth sawfish annually. All research objectives, capture methods, action areas, and activities would remain unchanged. The modification would be valid until the permit expires on October 31, 2013.

Dated: March 27, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–7886 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648- XA938

Marine Mammals; File No. 17029

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Matson's Laboratory, LLC (Gary Matson, Responsible Party), PO Box 308, 8140 Flagler Road, Milltown, MT 59851 to receive, import, export, and possess marine mammal specimens for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On January 25, 2012 notice was published in the **Federal Register** (77 FR 3744) that a request for a permit to import specimens for scientific research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit authorizes the receipt, possession, import and export of teeth and prepared microscope slides obtained from all pinniped species, expect walrus (Order Pinnipedia). No takes of live animals are authorized. The permit will be effective December 01, 2012, and expire December 01, 2017.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: March 27, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–7866 Filed 3–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Federal Student Aid; Guaranty Agency Financial Report

SUMMARY: The Guaranty Agency Financial Report (GAFR), U.S. Department of Education (ED) Form 2000, is used by the thirty-three (33) guaranty agencies under the Federal Family Education Loan program, authorized by Title IV, Part B of the Higher Education Act of 1965, as amended.

DATES: Interested persons are invited to submit comments on or before May 2, 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, D.C. 20202–4537. 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 04771. 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, D.C. 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.

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 Acting 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. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Guaranty Agency Financial Report.

OMB Control Number: 1845–0026.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 792.

Total Estimated Number of Annual Burden Hours: 43,560.

Abstract: Guaranty agencies use the GAFR to: (1) Request reinsurance from ED; (2) request payment on death, disability, closed school, and false certification claim payments to lenders; (3) remit to ED refunds on rehabilitated loans and consolidation loans; (4) remit to ED default and wage garnishment collections. ED also uses report data to monitor the guaranty agency's financial activities (agency federal fund and agency operating fund) and each agency's federal receivable balance.

Dated: March 28, 2012.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–7822 Filed 3–30–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. DW–007]

Notice of Petition for Waiver of BSH Corporation From the Department of Energy Residential Dishwasher Test Procedure, and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the BSH Corporation (BSH) petition for waiver (hereafter, ''petition'') from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of dishwashers. Today's notice also grants an interim waiver of the dishwasher test procedure. Through this notice, DOE also solicits comments with respect to the BSH petition.

DATES: DOE will accept comments, data, and information with respect to the BSH petition until May 2, 2012.

ADDRESSES: You may submit comments, identified by case number DW–007, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include ''Case No. DW–007'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Petition for Waiver Case No. DW–007, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar dishwasher products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes dishwashers.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for dishwashers is contained in 10 CFR part 430, subpart B, appendix C.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(a)(2) An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h)

II. Application for Interim Waiver and Petition for Waiver

On December 7, 2011, BSH submitted the instant petition for waiver from the test procedure applicable to dishwashers set forth in 10 CFR part 430, subpart B, appendix C. In every respect except the introduction of new model numbers, the instant petition is identical to one submitted by BSH on February 4, 2011. The February 4 petition was granted on June 29, 2011 (76 FR 38144). BSH states that ''hard'' water can reduce customer satisfaction with dishwasher performance resulting in increased pre-rinsing and/or hand washing as well as increased detergent and rinse agent usage. According to BSH, a dishwasher equipped with a water softener will minimize pre-rinsing and rewashing, and consumers will have less reason to periodically run their dishwasher through a clean-up cycle.

BSH also states that the amount of water consumed by the regeneration operation of a water softener in a dishwasher is very small, but that it varies significantly depending on the adjustment of the softener. The regeneration operation takes place infrequently, and the frequency is related to the level of water hardness. BSH included test results and calculations showing water and energy use very similar to that supplied by Whirlpool in its petition for waiver, which was granted by DOE. (75 FR 62127, Oct. 7, 2010). BSH states that the water used in the regeneration process is for the purpose of softening water rather than cleaning dishes. Therefore, according to BSH, this water and energy should not be included in the energy usage figures for washing dishes. BSH suggests a similar approach as used in EN50242. EN 50242 does not include the water or energy used in the water softening process in the dishwasher energy consumption calculation.

BSH also requested an interim waiver for particular basic models with integrated water softeners. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.27(g))

DOE determined that BSH's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship BSH might experience absent a favorable determination on its application for interim waiver. DOE has determined, however, that it is likely BSH's petition will be granted, and that it is desirable for public policy reasons to grant BSH relief pending a determination on the petition. Based on the information provided by BSH and Whirlpool, DOE determined that the test results may provide materially inaccurate comparative data.

BSH provided the European Standard EN 50242, ''Electric Dishwashers for Household Use—Methods for Measuring the Performance,'' as an alternate test procedure. This standard excludes water use due to softener regeneration from its water use efficiency measure. Use of EN 50242 would provide repeatable results, but would underestimate the energy and water use of these models. If water consumption of a regeneration operation were apportioned across all cycles of operation, manufacturers would need to make calculations regarding average water hardness and average water consumptions due to regeneration operations that are not currently provided for in the test procedure. In lieu of these calculations, constant values could be used to approximate the energy and water use due to softener regeneration. In its petition, BSH requests that constant values of 47.6 gallons per year for water consumption and 8.0 kWh per year for energy consumption be used.

Based on these considerations, and the waivers granted to BSH and Whirlpool for similar models, it appears likely that the petition for waiver will be granted. DOE also believes that the energy efficiency of similar products should be tested and rated in the same manner. As a result, DOE grants BSH's application for interim waiver for the basic models of dishwashers specified in its petition for waiver, pursuant to 10 CFR 430.27(g). Therefore, *it is ordered that:*

The application for interim waiver filed by BSH is hereby granted for the specified BSH dishwasher basic models, subject to the specifications and conditions below. BSH shall be required to test and rate the specified dishwasher products according to the alternate test procedure as set forth in section III, ''Alternate Test Procedure.''

The interim waiver applies to the following basic model groups:

Bosch brand:

- Basic Model—SHE7ER5#UC
  - SHE7ER5#UC
  - SHV7ER5#UC
  - SHX7ER5#UC
  - SGE63E1#UC
  - SHE9ER5#UC
  - SHV9ER5#UC
  - SHX9ER5#UC
  - SHE8ER5#UC
  - SHX8ER5#UC
- Basic Model—SPE5ES5#UC
  - SPE5ES5#UC
  - SPV5ES5#UC
  - SPX5ES5#

Thermador brand:

- Basic Model—DWHD650G##
  - DWHD650G##
  - DWHD651GFP
- Basic Model—DWHD640J##
  - DWHD640J##
- Basic Model—DWHD651J##
  - DWHD650J##
  - DWHD651J##

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. BSH may submit a subsequent petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes washers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making

representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27. DOE will consider setting an alternate test procedure for BSH in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, BSH shall test its dishwasher basic models according to the existing DOE test procedure at 10 CFR 430, subpart B, appendix C with the modification set forth below.

Under appendix C, the water energy consumption, W or Wg, is calculated based on the water consumption as set forth in Sect. 4.3:

§ 4.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix.

Where the regeneration of the water softener depends on demand and water hardness, and does not take place on every cycle, BSH shall measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. If a regeneration operation takes place within the test, the water consumed by the regeneration operation shall be disregarded when declaring water and energy consumption. Constant values of 47.6 gallons/year of water and 8 kWh/year of energy shall be added to the values measured by appendix C.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of BSH's petition for waiver from certain parts of the test procedure that apply to dishwashers and grants an interim waiver. DOE is publishing BSH's petition for waiver in its entirety. The petition contains no confidential information. The petition includes a suggested alternate test procedure which is to measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Mike Edwards, Senior Engineer, Performance and Consumption, BSH Home Appliances Corporation (FNbG), 100 Bosch Blvd., Building 102, New Bern, NC 28562–6924. All submissions received must include the agency name and case number for this proceeding.

Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on March 27, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

December 07, 2011

The Honorable Catherine Zoi
Assistant Secretary, Energy Efficiency and Renewable Energy
U.S. Department of Energy
Mail Station EE–10
1000 Independence Avenue SW
Washington, DC 20585

Via email (*cathy.zoi@ee.doe.gov*) and overnight mail

Re: Petition for Waiver and Application for Interim Waiver concerning the measurement of water and energy used in the water softening regeneration process of Dishwasher having an Integrated Water Softener

Dear Assistant Secretary Zoi:

BSH Home Appliance Corporation (''BSH'') hereby submits this Petition for Waiver and Application for Interim Waiver pursuant to 10 CFR 430.27, concerning the test procedure for measuring energy consumption of Dishwashers.

BSH is the manufacturer of household appliances bearing the brand names of Bosch, Thermador, and Gaggenau. Its appliances include dishwashers, washing machines, clothes dryers, refrigerator-freezers, ovens, and microwave ovens, and are sold worldwide, including in the United States. BSH's United States operations are headquartered in Irvine, California. BSH's appliances are produced in the United States and Germany.

10 CFR 430.27(a)(1) provides that any interested person may submit a petition to waive for a particular basic model any requirement of Section 430.23, or of any appendix to this subpart, upon grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics, or water consumption characteristics as to provide materially inaccurate comparative data. Additionally, 10 CFR 430.27 (b)(2) allows any applicant of a Petition of Waiver to also request an Interim Waiver if it can be demonstrated the likely success of the Petition for Waiver, while addressing the economic hardship and/or competitive disadvantage that is likely to result absent a favorable determination on the Application for Interim Waiver.

This request for Waiver is directed to Dishwashers containing a built-in or integrated water softener, specifically addressing the energy and water used in the regeneration process of the integrated water softener. This request is identical to Waiver Case Number DW–005 previously granted to BSH Home Appliance Corporation with the only modification being to add additional model numbers. Further, the water softening technology used in these models is identical to the models that were previously approved.

Based on the reasoning indicated herein, BSH submits that the testing of Dishwashers equipped with a water softener under the current DOE test procedure may lead to information that could be considered misleading to consumers.

1. Identification of Basic Models

The Dishwasher models manufactured by BSH which contain an integrated water softener and were not included in Waiver case No. DW–005 is as follows:

Bosch brand:

- Basic Model—SHE7ER5#UC
  - SHE7ER5#UC
  - SHV7ER5#UC
  - SHX7ER5#UC
  - SGE63E1#UC
  - SHE9ER5#UC
  - SHV9ER5#UC
  - SHX9ER5#UC
  - SHE8ER5#UC
  - SHX8ER5#UC
- Basic Model—SPE5ES5#UC
  - SPE5ES5#UC
  - SPV5ES5#UC
  - SPX5ES5#UC

Thermador brand:

- Basic Model—DWHD650G##
  - DWHD650G##

- DWHD651GFP
- Basic Model—DWHD640J##
  - DWHD640J##
- Basic Model—DWHD651J##
  - DWHD650J##
  - DWHD651J##

2. Background

The design characteristic that is unique among the above listed models is an integrated water softener. The primary function of a water softener is to reduce the high mineral content of ''hard'' water. Hard water reduces the effectiveness of detergents leading to additional detergent usage. Hard water also causes increased water spots on dishware, resulting in the need to use more rinse aid to counterbalance this effect. ''Hard'' water can reduce customer satisfaction with Dishwasher performance resulting in increased pre-rinsing and/or hand washing as well as increased detergent and rinse agent usage.

The water softening process requires water usage for both the regeneration process and to flush the system. For purposes of this Waiver request, the term ''regeneration'' will include the water and energy used in both the flushing and regeneration process of the water softener. The water used in the regeneration process is in addition to the water used in the dish washing process. The water used in the regeneration process does not occur with each use of the Dishwasher. The frequency of the regeneration process is dependant upon an adjustable water softener setting that is controlled by the end user, and based on the home water hardness. Regeneration frequency will vary greatly depending upon the customer setting of the water softener. Data from the U.S. Geological Survey shows considerable variation in the water hardness within the U.S. and for many locations the use of a water softener is not necessary. Water hardness varies throughout the U.S. with the mean hardness of 217 mg/liter or 12.6 grains/gallon (based on information provided by the U.S. Geological Survey located at *http://water.usgs.gov/owq/hardness-alkalinity.html*).

Calculations

Water Use

- Based on the DOE Energy Test for Dishwashers, the BSH Dishwashers listed in this waiver with an internal water softener use an average of 6.65 liters of water per dish cleaning cycle.
- Based on an average U.S. water hardness of 12.6 grains/gallon, the internal BSH Dishwasher water softener system would be set on ''4''.
- Based on a BSH Dishwasher internal water softening system setting of ''4'' and the dishwasher using 6.65 liters of water per run, the water regeneration process would occur every 6th cycle.
- When using the Dishwasher 215 times per year (per DOE test procedure), the regeneration process would occur 35.8 times (36).
- The internal BSH water softening system uses 4.97 liters (5.0) per regeneration cycle.
- Water usage calculation based on above data.
  - $36 \times 5 = 180$ liters per year (47.6 gallons) or .84 liters (.22 gallons) each time the dishwasher is used.

Energy Used in kWh

- Formula $W = V \times T \times K$
  - V = Weighted Average Water Usage per DOE
  - T = Nominal water heater temperature rise of 39 °C
  - K = Specific heat of water 0.00115
- Calculated Energy use—$180 \times 39 \times .00115 = 8.0$ kWh/yr

Summary

- A Dishwasher built by BSH with an integrated water softener in a home with a 12.6 grain per gallon water hardness would be cycled through the water softening regeneration process approximately every 6 dish cleaning cycles. When the water used in the water softener regeneration process is apportioned evenly over all dishwasher runs, the amount of energy and water usage per cycle is very low. Based on the assumptions provided, BSH estimates the typical water used in the internal Dishwasher water softener regeneration process at .84 liters (.22 gallons) per use; furthermore, using about 8.0 kWh per year to heat this water in the home hot water heater.

Note: Contrary to current DOE direction, in BSH's opinion the water used in the Water Softening regeneration process has the separate and distinct purpose of softening water and we do not feel that this water and energy should be included in the energy usage figures for washing dishes. EN 50242 does not include the water or energy used in the water softening process in the dishwasher energy consumption calculation and BSH would suggest adopting a similar approach as used in EN50242 when the test procedure is updated.

3. Requirements Sought To Be Waived

Dishwashers are subjected to test methods outlined in 10 CFR Part 430, Subpart B, App. C, Section 4.3, which specifies the method for the water energy calculation.

- To stay consistent with the recently approved Whirlpool waiver, BSH is requesting approval to estimate the water and energy used in the water softening process based on the design of the BSH Dishwasher and the calculations and assumptions outlined above.

4. Grounds for Waiver and Interim Waiver

10 CFR 430.27 (a) (1) provides that a Petition to waive a requirement of 430.23 may be submitted upon grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

If a water softener regeneration process was to occur while running an energy test, the water usage would be overstated. In this case, the water energy usage would be unrepresentative of the product providing inaccurate data resulting in a competitive disadvantage to BSH.

Granting of an Interim Waiver in this case is justified since the prescribed test procedures would potentially evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. In addition, a similar Interim Waiver and Waiver has previously been granted to BSH.

5. Manufacturers of Similar Products and Affected Manufacturers

Web based research shows that at least two other manufacturers are currently selling dishwashers with an integrated water softener, Miele Inc. and Whirlpool Corporation (Waiver Granted).

Manufacturers selling dishwashers in the United States include AGA Marvel, Arcelik A.S., ASKO Appliances, Inc., Electrolux North America, Inc., Fagor America, Inc., Fisher & Paykel Appliances, GE Appliances and Lighting, Haier America, Indesit Company Sa, Kuppersbusch USA, LG Electronics USA, Miele, Inc., Samsung Electronics Co., Viking Range Corporation and Whirlpool Corporation.

BSH will notify all companies listed above (as well as AHAM), as required by the Department's rules, providing them with a copy of this Petition for Waiver and Interim Waiver.

6. Conclusion

BSH Home Appliances Corporation hereby requests approval of the Waiver petition and Interim Waiver. By granting said Waivers the Department of Energy will further ensure that water energy is measured in the same way by all Dishwasher Manufacturer's that have a integrated water softener. Further, BSH would request that these Waivers be in good standing until such time that the test procedure can be formally modified to account for integrated water softeners.

BSH Home Appliances certifies that all manufacturers of domestic Dishwashers as listed above have been notified by letter. Copies of these notifications are attached.

With Best Regards,

Mike Edwards
Senior Engineer, Performance and Consumption
BSH Home Appliances Corporation (FNbG)
100 Bosch Blvd., Building 102
New Bern, NC 28562–6924
mike.edwards@bshg.com
www.boschappliances.com
Phone (252) 636–4334
Fax (252) 636–4450

[FR Doc. 2012–7811 Filed 3–30–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–022]

Notice of Petition for Waiver of Sanyo E&E Corporation from the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy, DoE.

ACTION: Notice of petition for waiver and request for comments.

SUMMARY: This notice announces receipt of and publishes the Sanyo E&E Corporation (Sanyo) petition for waiver (hereafter, ''petition'') from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. The waiver request pertains to the hybrid wine chiller/beverage center basic models set forth in Sanyo's petition. In its petition, Sanyo provides an alternate test procedure to test the wine chiller compartment at 55 °F instead of the prescribed temperature of 38 °F. DOE solicits comments, data, and information concerning Sanyo's petition and the suggested alternate test procedure.

DATES: DOE will accept comments, data, and information with respect to the Sanyo Petition until May 2, 2012.

ADDRESSES: You may submit comments, identified by case number ''RF–022,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov* Include the case number [Case No. RF–022] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/ 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar refrigerator-freezers. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified, established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and electric refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

II. Petition for Waiver of Test Procedure

On June 2, 2011, Sanyo submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, Subpart B, Appendix A1. Sanyo is requesting a waiver with respect to the test procedures for its hybrid models that consist of single-cabinet units with

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

a refrigerated beverage compartment in the top portion and a wine storage compartment in the bottom of the units. DOE issued guidance that clarified the test procedures to be used for hybrid products such as the Sanyo models at issue here: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/refrigerator_definition_faq.pdf* This guidance specifies that basic models such as the ones Sanyo identifies in its petition, which do not have a separate wine storage compartment with a separate exterior door, are to be tested according to the DOE test procedure in Appendix A1, with the temperatures specified therein. Sanyo asserts that the wine storage compartment cannot be tested at the prescribed temperature of 38°F, because the minimum compartment temperature is 45°F. Sanyo submitted an alternate test procedure to account for the energy consumption of its wine chiller/beverage centers. That alternate procedure would test the wine chiller compartment at 55°F, instead of the prescribed 38°F. The following basic models are included in Sanyo's petition:

JUB248LB, JUB248RB, JUB248LW, JUB248RW, KBCO24LS, KBCS24LS, KBCO24RS, KBCS24RS, and MBCM24FW.

DOE makes decisions on waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Sanyo may submit a subsequent petition for waiver for additional models of electric refrigerators and refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that the grant of a waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

We also note that the energy consumption of the basic models detailed in Sanyo's petition suggests that these products, when tested in accordance with the alternate test procedure Sanyo is requesting to use, would appear to use an amount of energy that exceeds the energy conservation standards for the likely product classes that would apply. While this is a separate issue from the merits presented by this petition, DOE notes that should this in fact be the case, Sanyo would also need to seek exception relief from the applicable standards through the Office of Hearings and Appeals prior to making these products available for sale. The process for seeking such relief, which is authorized under 42 U.S.C. 7194, is detailed at 10 CFR 1003.20–1003.27.

III. Summary and Request for Comments

Through today's notice, DOE announces receipt of Sanyo's petition for waiver from certain parts of the test procedure that applies to residential refrigerators and refrigerator -freezers. DOE is publishing Sanyo's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure to determine the energy consumption of Sanyo's specified hybrid refrigerators.

DOE solicits comments from interested parties on all aspects of the petition. Any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Adam D. Bowser, ARENT FOX LLP, 1050 Connecticut Avenue NW, Washington, DC 20036–5369, (202) 857–6450. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on March 27, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Before The

U.S. Department of Energy

Washington, DC 20585

In the Matter of: SANYO E&E Corp., Petitioner.

Case Number: _____

Petition for Waiver

SANYO E&E Corporation (''SANYO E&E'') respectfully submits this Petition for Waiver (''Petition'') pursuant to 10 C.F.R. § 430.27 on the ground that its hybrid wine chiller/beverage center models (''hybrid model(s)'') listed below contain one or more design characteristics that prevent testing of the basic models according to the test procedures prescribed in 10 C.F.R. § 430, subpart B, appendix A1. Sanyo therefore requests that it be permitted to employ the alternative testing method detailed below, as it is currently impossible to test these hybrid models under the existing test procedures.

1. Description of Applicant

SANYO E&E is part of an international organization with many subsidiaries and affiliates, including in the United States. Further information can be found at *http://www.sanyo.com.* SANYO E&E's core traditional business has been the production of compact and mid-size refrigerators, freezers, wine storage appliances and other consumer and commercial refrigeration products. SANYO E&E, which is headquartered in San Diego, California, has been designing and selling these consumer and commercial refrigeration products since 1979. Further, SANYO E&E produces products sold not only under the SANYO brand name, but also under multiple other brand names and which are sold in the United States by SANYO E&E's customers.

2. Background and General Information

SANYO E&E is requesting a waiver with respect to the test procedures for its hybrid models that consist of a combination of a refrigerated ''beverage'' compartment in the top portion of these single-cabinet units and a wine storage compartment on the bottom of the units, and for which an alternative testing procedure is necessary in order to certify, rate, and sell such models. These hybrid models include the following basic models: JUB248LB, JUB248RB, JUB248LW, JUB248RW, KBCO24LS, KBCS24LS, KBCO24RS, KBCS24RS, and MBCM24FW.

SANYO E&E understands that DOE does not wish to prevent manufacturers from marketing new, innovative products that will enhance consumers' well being and satisfaction. The market for wine storage products and related hybrid models has seen robust growth over the last few years and is expected to continue expanding for the foreseeable future. Therefore, there is a significant demand and need for these hybrid models. As discussed below, however, because of their unique design characteristics and temperature specifications, there is no way to certify, rate, and sell these hybrid models under

the existing testing procedures, and a waiver is thus necessary.

DOE has now clarified that it considers such hybrid models as covered products. Currently, however, there are no DOE testing procedures specifically tailored to hybrid models. Accordingly, the current testing requirements would not measure energy usage in a manner that truly represents the energy-consumption characteristics of these unique products, and, in fact, as described below, it would be impossible to test these models under the existing testing procedures. As DOE has previously stated, ''[f]ully recognizing that product development occurs faster than the test procedure rulemaking process, the Department's rules permit manufacturers of models not contemplated by the test procedures * * * to petition for a test procedure waiver in order to certify, rate, and sell such models.'' GC Enforcement Guidance on the Application of Waivers and on the Waiver Process at 2 (rel. Dec. 23, 2010); [1] see also DOE FAQ Guidance Regarding Coverage of Wine Chillers, Etc. in the R/F Standard/Test Procedure at 2 (rel. Feb. 10, 2011) (''DOE recognizes the potential disparity in treatment among these hybrid products. As DOE indicated * * *, the Department plans to engage in a future rulemaking to more comprehensively address these types of products.'').

Accordingly, SANYO E&E respectfully requests a waiver from the test procedures prescribed in 10 C.F.R. § 430, subpart B, appendix A1 until such time as DOE issues test procedures tailored to the unique product characteristics of these hybrid models, as discussed below.

3. Product Characteristics of SANYO E&E Hybrid Models

As noted above, SANYO E&E's hybrid models consist of a combination of a refrigerated ''beverage'' compartment in the top portion of these single-cabinet units and a wine storage compartment on the bottom of the units. Wine connoisseurs recommend an average of 55–57 °F for the long term storage of any kind of wine, and SANYO E&E has designed the wine storage compartments of its hybrid models with this ideal average temperature in mind. But because various types of wines have different ideal drinking temperatures (e.g., some red wines are best served in the mid-sixties, while some white wines are ideally served in the mid-forties), SANYO E&E has designed the wine storage compartments of its hybrid models to operate between a minimum temperature of 45 °F and a maximum temperature of 64 °F. In fact, heaters are used to ensure that the temperature in the wine storage compartment never drops below 45 °F, as wines chilled below this temperature risk becoming crystallized and, therefore, ruined. Currently, however, DOE's testing procedures contained in 10 C.F.R. § 430, subpart B, appendix A1, mandate that energy consumption be measured when the compartment temperature is set at 38 °F. Based on the design characteristics of its hybrid models noted above, however, SANYO E&E would need a waiver in order to properly ''certify, rate, and sell such models,'' because the existing test procedures contained in 10 C.F.R. § 430, subpart B, appendix A1, do not contemplate a product that is designed to be incapable of achieving a temperature below 45 °F. In short, testing SANYO E&E's hybrid models at 38 °F is simply not possible and not representative of the energy consumption characteristics of these models.

Further, the hybrid models will typically have a door-opening usage aligned with household freezers, thus 0.85 is the employed K factor (correction factor). See Appendix B1 to Subpart 430, 5.2.1.1, because Subpart 430 does not recognize wine chiller as a category. Thus, the K factor from CAN/CSA 300–08 6.3.1.2 and HRF–1–2007 8.7.2.1.1 is used.

SANYO E&E's hybrid models listed above currently cannot be tested under the existing regulations, without a waiver as sought herein. To evaluate the models in a manner truly representative of their actual energy consumption characteristics, the standard temperature of single wine coolers (55 °F) for the wine storage compartment and the standard temperature (38 °F) for the refrigerated beverage compartment should be used. Therefore, the energy consumption is defined by the higher of the two values calculated by the following two formulas (according to 10 C.F.R. § 430, subpart B, Appendix A1):

Energy consumption of the wine compartment:

$$EWine = ET1 + [(ET2–ET1) \times (55\ °F–TW1)/(TW2–TW1)] * 0.85$$

Energy consumption of the refrigerated beverage compartment:

$$EBeverage\ Compartment = ET1 + [(ET2 - ET1) \times (38\ °F - TBC1)/(TBC2 - TBC1)].$$

The total adjusted volume of basic model MBCM24FW is 5.75 cubic feet. Using the standard temperature of 55 °F for the wine compartment the annual energy use of the model is 436 kWh/year. According to current DOE standards, this model is classified as a compact refrigerator with automatic defrost without through-the-door ice service.

The total adjusted volume of basic models JUB248LB, JUB248RB, JUB248LW, JUB248RW, KBCO24LS, KBCS24LS, KBCO24RS, KBCS24RS is 5.41 cubic feet. Using the standard temperature of 55 °F for the wine compartment the annual energy use of the model is thus 431 kWh/year. According to current DOE standards, these models are also classified as compact refrigerators with automatic defrost without through-the-door ice service.

4. Manufacturers of Other Basic Models Marketed in the United States Known to Incorporate Similar Design Characteristics

After reviewing publicly available product manuals of comparable hybrid models, SANYOE E&E was unable to locate a basic model marketed in the United States that incorporates similar design characteristics and that also would be considered a ''covered product'' under Section 430.62 of DOE's rules.[2]

If DOE requires any additional information to properly consider this Petition for Waiver, please do not hesitate to contact the undersigned.

Respectfully submitted,

Kenji Maru
President
SANYO E&E Corp.

Alan G. Fishel
Adam D. Bowser

Arent Fox LLP
1050 Connecticut Avenue NW
Washington, DC 20036–5369

[1] Available at *http://www.gc.energy.gov/documents/LargeCapacityRCW_guidance_122210.pdf.*

[2] SANYO E&E cannot guarantee that its search disclosed every possible competing model, as SANYO E&E ordinarily does not search for and retain this information in the normal course of business, but to the best of SANYO E&E's knowledge, certain GE hybrid models appear to be the closest substitutes to SANYO E&E's hybrid models in terms of both functionality and design characteristics. However, GE represents in its product manuals that its hybrid models, specifically, ZDBC240, ZDBT240, ZDBR240, and ZDBI240, do not achieve temperatures below 40 °F and thus would not be considered a covered product under DOE regulations. SANYO E&E is uncertain if GE means that the average temperature of the entire cabinet does not drop below 40 °F, which is the case with all SANYO E&E's hybrid models, or whether GE is representing that no portion of its single-cabinet models can achieve temperatures below 40 °F. Based on this uncertainty, SANYO E&E excluded GE from this section. SANYO E&E's research did not reveal any other basic models that, after review of the design characteristics, were comparable to SANYO E&E's hybrid models.

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Date

[FR Doc. 2012–7812 Filed 3–30–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–84–000.
Applicants: AER NY-Gen, LLC, Alliance NYGT, LLC.
Description: AER NY-Gen, LLC and Alliance NYGT, LLC submits their Application for Approval under Section 203 of the Federal Power Act and Request for Expedited Consideration.
Filed Date: 3/20/12.
Accession Number: 20120320–5171.
Comments Due: 5 p.m. ET 4/10/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–629–001.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits tariff filing per 35: Compliance Filing, Oklahoma Municipal Power Authority Letter Agreement to be effective N/A.
Filed Date: 3/20/12.
Accession Number: 20120320–5163.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: ER12–1296–000.
Applicants: ResCom Energy LLC.
Description: Amended Tariff Filing to be effective 2/3/2012.
Filed Date: 3/20/12.
Accession Number: 20120320–5154.
Comments Due: 5 p.m. ET 4/10/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–23–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Second Amendment to Application for Authorization of the Assumption of Liabilities and the Issuance of Securities under Section 204 of the Federal Power Act of Wolverine Power Supply Cooperative, Inc.
Filed Date: 3/16/12.
Accession Number: 20120316–5102.
Comments Due: 5 p.m. ET 3/26/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 21, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–7777 Filed 3–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1513–001.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Amended Market Power Update of Wolverine Power Supply Cooperative, Inc.
Filed Date: 3/9/12.
Accession Number: 20120309–5160.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: ER10–3199–001.
Applicants: Montana-Dakota Utilities Co., a Division.
Description: Request of Montana-Dakota Utilities Co., a Division of MDU Resources Group Inc.
Filed Date: 3/20/12.
Accession Number: 20120320–5112.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: ER12–1189–001.
Applicants: DeWind Novus, LLC.
Description: Amended MBR Tariff Filing to be effective 4/30/2012.
Filed Date: 3/20/12.
Accession Number: 20120320–5115.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: ER12–1292–000.
Applicants: Goshen Phase II LLC.
Description: Amended and Restated SFA to be effective 12/31/9998.
Filed Date: 3/20/12.
Accession Number: 20120320–5000.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: ER12–1294–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of Service Agreement 2949 in Docket No. ER11–3890–000 to be effective 1/31/2012.
Filed Date: 3/20/12.
Accession Number: 20120320–5062.
Comments Due: 5 p.m. ET 4/10/12.

Docket Numbers: ER12–1295–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of SA No. 2841 under Docket No. ER11–3347–000 to be effective 2/29/2012.
Filed Date: 3/20/12.
Accession Number: 20120320–5064.
Comments Due: 5 p.m. ET 4/10/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 20, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–7776 Filed 3–30–12; 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 corporate filings:

Docket Numbers: EC12–82–000.
Applicants: Ridgeline Alternative Energy, LLC, Wolverine Creek Goshen Interconnection LLC.
Description: Errata Letter to Submit Revised Exhibit B.
Filed Date: 3/21/12.
Accession Number: 20120321–5175.
Comments Due: 5 p.m. ET 4/6/12.

Docket Numbers: EC12–83–000.
Applicants: Goshen Phase II LLC, Ridgeline Alternative Energy, LLC.

Description: Errata Letter to Submit Revised Exhibit B.
Filed Date: 3/21/12.
Accession Number: 20120321–5176.
Comments Due: 5 p.m. ET 4/9/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1484–003.
Applicants: Shell Energy North America (US), L.P.
Description: Notice of Change in Status of Shell Energy North America (US), L.P.
Filed Date: 3/21/12.
Accession Number: 20120321–5185.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–726–001.
Applicants: Spring Valley Wind LLC.
Description: Supplement to Amended Application for Market-Based Rate Authority of Spring Valley Wind LLC.
Filed Date: 3/21/12.
Accession Number: 20120321–5180.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1170–001.
Applicants: Imperial Valley Solar Company (IVSC) 1, LLC.
Description: Amended Market-Based Rate Tariff of IVSC 1 to be effective 2/28/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5162.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1305–000.
Applicants: California Independent System Operator Corporation.
Description: 2013–03–21 CAISOs LGIA with Nevada Hydro and SDGE to be effective 5/21/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5125.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1306–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3262; Queue No. W4–068 to be effective 2/28/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5127.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1307–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Ministerial Filing to be effective 3/22/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5128.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1308–000.
Applicants: Palouse Wind, LLC.
Description: Palouse Wind, LLC Market-Base Rate Tariff to be effective 5/20/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5144.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1309–000.
Applicants: New England Power Company.
Description: Local Service Agreement with Templeton Municipal Light Plant to be effective 3/1/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5146.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1310–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3261; Queue No. W3–045 to be effective 2/27/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5152.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1311–000.
Applicants: Stetson Holdings, LLC.
Description: Notice of Succession to be effective 3/22/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5156.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1312–000.
Applicants: California Independent System Operator Corporation.
Description: Notice of the California ISO of Termination of Large Generator Interconnection Agreement Among the Nevada Hydro Company, Inc.; San Diego Gas & Electric Company; and the California Independent System Operator Corporation.
Filed Date: 3/21/12.
Accession Number: 20120321–5183.
Comments Due: 5 p.m. ET 4/11/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–7779 Filed 3–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–499–000.
Applicants: Texas Gas Transmission, LLC.
Description: SW 27019 & 27435 Short-term Amendments to Negotiated Rate Agreements to be effective 3/20/2012.
Filed Date: 3/19/12.
Accession Number: 20120319–5138.
Comments Due: 5 p.m. ET 4/2/12.

Docket Numbers: RP12–500–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: JP Morgan Negotiated Rate Filing to be effective 9/30/2010.
Filed Date: 3/19/12.
Accession Number: 20120319–5181.
Comments Due: 5 p.m. ET 4/2/12.

Docket Numbers: RP12–501–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Tenaska Negotiated Rate Filing to be effective 4/1/2012.
Filed Date: 3/19/12.
Accession Number: 20120319–5195.
Comments Due: 5 p.m. ET 4/2/12.

Docket Numbers: RP12–502–000.
Applicants: Hardy Storage Company, LLC.
Description: Request for Limited Waiver of Filing Date for Annual Retainage Adjustment Mechanism filing for Hardy Storage Company, LLC under RP12–502.
Filed Date: 3/20/12.
Accession Number: 20120320–5123.
Comments Due: 5 p.m. ET 3/27/12.

Docket Numbers: RP12–503–000.
Applicants: CenterPoint Energy Gas Transmission Company, LLC.
Description: CenterPoint Energy Gas Transmission Company, LLC submits tariff filing per 154.204: PTP Tariff Filing to be effective 5/1/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5018.
Comments Due: 5 p.m. ET 4/2/12.

Docket Numbers: RP12–504–000.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: NJR Negotiated Rate—eff. 4–1–2012 to be effective 4/1/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5028.
Comments Due: 5 p.m. ET 4/2/12.

Docket Numbers: RP12–505–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Ozark Gas Transmission, L.L.C. submits tariff filing per 154.204: Negotiated Rate—SW Energy—contract 820131 to be effective 4/1/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5046.
Comments Due: 5 p.m. ET 4/2/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–387–001.
Applicants: Dominion Transmission, Inc.
Description: DTI—February 17, 2012 Form of Service Agreement Revision Compliance to be effective 3/19/2012.
Filed Date: 3/20/12.
Accession Number: 20120320–5102.
Comments Due: 5 p.m. ET 4/2/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service 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: March 21, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–7781 Filed 3–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–85–000.
Applicants: Post Rock Wind Power Project, LLC, Lost Creek Wind, LLC, Osage Wind, LLC.
Description: Section 203 Application of Post Rock Wind Power Project, LLC, et al.
Filed Date: 3/22/12.
Accession Number: 20120322–5043.
Comments Due: 5 p.m. ET 4/12/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1285–002.
Applicants: Craven County Wood Energy Limited Partnership.
Description: Supplement to Notice of Change in Status of Craven County Wood Energy Limited Partnership.
Filed Date: 3/21/12.
Accession Number: 20120321–5182.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER10–3254–001.
Applicants: Cooperative Energy Incorporated (An Electric Membership Corporation).
Description: Cooperative Energy Incorporated (An Electric Membership Corporation) Amendment to Updated Market Power Analysis.
Filed Date: 3/21/12.
Accession Number: 20120321–5171.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1313–000.
Applicants: Silver State Solar Power North, LLC.
Description: Cancellation of Existing Tariff ID to be effective 3/22/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5026.
Comments Due: 5 p.m. ET 4/12/12.

Docket Numbers: ER12–1314–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: RCPF Value Change to be effective 6/1/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5034.
Comments Due: 5 p.m. ET 4/12/12.

Docket Numbers: ER12–1315–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: G311 IA Termination to be effective 5/22/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5037.
Comments Due: 5 p.m. ET 4/12/12.

Docket Numbers: ER12–1316–000.
Applicants: Silver State Solar Power North, LLC.
Description: Silver State Solar Power North LLC Baseline Tariff to be effective 3/25/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5049.
Comments Due: 5 p.m. ET 4/12/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–7780 Filed 3–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–45–000.
Applicants: Palouse Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Palouse Wind, LLC.
Filed Date: 3/21/12.
Accession Number: 20120321–5113.
Comments Due: 5 p.m. ET 4/11/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1297–000.
Applicants: Delmarva Power & Light Company.
Description: Delmarva Power & Light Company submits tariff filing per 35.1: Amendment to Facilities Agreement between Delmarva and Easton to be effective 3/22/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5029.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1298–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2268 ITC–AEPOTC Interconnection Agreement to be effective 3/1/2012.
Filed Date: 3/21/12.

Accession Number: 20120321–5072.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1299–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Wolverine Power Supply Cooperative, Inc. submits tariff filing per 35.13(a)(2)(iii: Amended and Restated Bradley Interconnection Facilities Agreement to be effective 3/22/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5103.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1300–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii: EAI PCITSA—43rd Amendment to be effective 6/1/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5104.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1301–000.
Applicants: Zone J Tolling Co., LLC.
Description: Zone J Tolling Co., LLC submits tariff filing per 35.12: Zone J Tolling Co., LLC Market-Based Rate Tariff to be effective 4/30/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5106.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1302–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Unexecuted LGIA LEAPS Project, The Nevada Hydro Company, Inc. to be effective 5/21/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5107.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1303–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc., on behalf of Entergy Arkanass, Inc., files EAI's 2012 Wholesale Rate Update for AECC.
Filed Date: 3/21/12.
Accession Number: 20120321–5115.
Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1304–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., files EAI's 2012 Wholesale Rate Update for Arkansas Cities.
Filed Date: 3/21/12.
Accession Number: 20120321–5116.
Comments Due: 5 p.m. ET 4/11/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 21, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–7778 Filed 3–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–506–000.
Applicants: Natural Gas Pipeline Company of America.
Description: JP Morgan Ventures Negotiated Rate Filing to be effective 4/1/2012.
Filed Date: 3/21/12.
Accession Number: 20120321–5161.
Comments Due: 5 p.m. ET 4/2/12.

Docket Numbers: RP12–507–000.
Applicants: Petal Gas Storage, L.L.C.
Description: Create PKS Service to be effective 5/1/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5041.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: RP12–508–000.
Applicants: Northern Natural Gas Company.
Description: 20120322 J. Aron Non-Conforming/Negotiated Rate to be effective 4/22/2012.
Filed Date: 3/22/12.
Accession Number: 20120322–5077.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: RP12–509–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: Flow Through of Cash Out Revenues filed on 3–22–12 to be effective N/A.
Filed Date: 3/22/12.
Accession Number: 20120322–5098.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: RP12–510–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: Flow Through of Penalty Revenues Report filed on 3–22–12 to be effective N/A.
Filed Date: 3/22/12.
Accession Number: 20120322–5106.
Comments Due: 5 p.m. ET 4/3/12.

Docket Numbers: RP12–511–000.
Applicants: Kern River Gas Transmission Company.
Description: 2012 SCRS Restatements to be effective 4/1/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5009.
Comments Due: 5 p.m. ET 4/4/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service 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: March 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–7773 Filed 3–30–12; 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 corporate filings:

Docket Numbers: EC12–83–000.
Applicants: Goshen Phase II LLC, Ridgeline Alternative Energy, LLC.
Description: Joint Application for Authorization under Section 203 of the Federal Power Act of Goshen Phase II and Ridgeline Alternative Energy.
Filed Date: 3/19/12.
Accession Number: 20120319–5240.
Comments Due: 5 p.m. ET 4/9/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–41–000.
Applicants: ITC Midwest LLC.
Description: Filing of a Refund Report to be effective N/A.
Filed Date: 3/19/12.
Accession Number: 20120319–5099.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: ER12–922–001.
Applicants: Phillips 66 Company.
Description: Revision to Baseline MBR Tariff to be effective 4/1/2012.
Filed Date: 3/19/12.
Accession Number: 20120319–5215.
Comments Due: 5 p.m. ET 4/2/12.

Docket Numbers: ER12–1116–000.
Applicants: Cleco Power LLC, Cleco Evangeline LLC.
Description: Cleco Power LLC and Cleco Evangeline LLC submits the joint application requesting authorization from the Commission of a three-year power purchase agreement pursuant to Section 205 of the Federal Power Act.
Filed Date: 3/19/12.
Accession Number: 20120320–0001.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: ER12–1290–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of Service Agreement 2850, to be effective 2/17/2012.
Filed Date: 3/19/12.
Accession Number: 20120319–5217.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: ER12–1291–000.
Applicants: Wellhead Power Delano, LLC.
Description: Wellhead Power Delano, LLC Market-Based Rate Tariff to be effective 5/10/2012.
Filed Date: 3/19/12.
Accession Number: 20120319–5230.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: ER12–1293–000.
Applicants: Portland General Electric Company.
Description: Request for Limited Waiver of Portland General Electric Company.
Filed Date: 3/19/12.
Accession Number: 20120319–5236.
Comments Due: 5 p.m. ET 4/9/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 20, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–7775 Filed 3–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12470–001]

City of Broken Bow, OK; Notice of Technical Conference

March 21, 2012.

Take notice that a technical conference will be held to discuss the section 4(e) conditions filed by the U.S. Forest Service on November 16, 2007 for the Broken Bow Re-Regulation Dam Hydroelectric Project No. 12470.

This conference will be held on Wednesday, April 25, 2012, beginning at 9:30 a.m. (CDT) at the U.S. Forest Service's Hochatown Office, Route 4, Broken Bow, OK 74728.

All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate. There will be no transcript of the conference. Please contact Aaron Liberty at (202) 502–6862 or *Aaron.Liberty@ferc.gov* by April 5, 2012, to RSVP.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–7774 Filed 3–30–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2011–0943; FRL–9655–1]

Draft National Water Program 2012 Strategy: Response to Climate Change

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: The Environmental Protection Agency is publishing for public comment a draft long-range strategy that describes how the agency will address climate change challenges to its mission of protecting human health and the environment. Climate change alters the hydrological background in which EPA's programs function. Depending upon the regional, local and even temporal nature of effects, climate change will pose challenges to various aspects of water resource management, including how to: address risks to drinking water, wastewater and storm water infrastructure; protect quality of surface water, ground water and drinking water; build resilience of watersheds, wetlands, and coastal and ocean waters; and work with tribal communities to understand the implications of climate change to their economy and culture.

DATES: Comments must be received on or before May 17, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2011–0943, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*—Follow the on-line instructions for submitting comments.
- *Email: ow-docket@epa.gov*. Include EPA–HQ–OW–2011–0943 in the subject line of the message.
- *Mail:* Send your comments to: Water Docket, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention: Docket ID No. EPA–HQ–OW–2011–0943.
- *Hand Delivery/Courier:* Deliver your comments to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2011–0943. Such deliveries are accepted only during normal hours of operation, which are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The telephone number for the Water Docket is 202–566–2426.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2011–0943. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* {or email}. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA Docket Center, 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: Ms. Elana Goldstein, Office of Water (4101M), Environmental Protection Agency, Ariel Rios Building, Mail Code 4101M, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 202–564–1800; email address: *water_climate_change@epa.gov*. For more information, visit: *http://epa.gov/water/climatechange.*

SUPPLEMENTARY INFORMATION:

What should I consider as I prepare my comments for EPA?

To remain effective and continue fulfilling its mission, the EPA will need to adapt to already observed and projected changes. To that end, the Agency will continue to collaborate with partners at the federal, state, tribal, and local levels to develop the requisite information, tools and strategies. The *Draft National Water Program 2012 Strategy: Response to Climate Change (Draft 2012 Strategy)* addresses the challenges climate change poses and lays out a long term vision for the sustainable management of water resources for future generations in light of climate change. The *Draft 2012 Strategy* is intended to be a roadmap to guide future programmatic planning, and inform decision makers during the Agency's annual planning process. It describes the array of actions that should be taken in the coming years to build a climate resilient national water program.

The following questions are intended to solicit input and insight for particular areas of the *Draft 2012 Strategy.* In addition to these questions, reviewers are encouraged to consider their own questions pertinent to their interests.

- Which Clean Water Act and Safe Drinking Water Act program areas do you think are most vulnerable to climate change? Which strategic actions should be prioritized? Are there strategies that are missing or need revision?
- Are there important partnerships that have not been identified?
- Are there examples of methods for measuring and tracking progress and outcomes of adaptation activities? Is the approach described adequate?
- Are there research priorities that were not listed?
- Please supply any additional references addressing the economics of climate change adaptation (e.g., assessing the costs and benefits of climate change adaption projects).
- How can we improve our representation of tribal climate change and water interests? Are there examples of incorporating traditional ecological knowledge involving water resources into climate adaptation science and strategies?

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Dated: March 28, 2012.

Nancy K. Stoner,

Acting Assistant Administrator for Water.

[FR Doc. 2012–7816 Filed 3–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0959; FRL–9343–5]

Pesticide Reregistration Performance Measures and Goals; Annual Progress Report; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA's progress report in meeting its performance measures and goals for pesticide reregistration during fiscal year 2011.

FOR FURTHER INFORMATION CONTACT: Carol P. Stangel, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8007; email address: *stangel.carol@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why is EPA announcing the availability of this report?

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires EPA to publish information about EPA's annual achievements in meeting its performance measures and goals for pesticide reregistration. The report for fiscal year 2011 discusses the integration of tolerance reassessment with the reregistration process, and describes the status of various regulatory activities associated with reregistration and tolerance reassessment. The 2011 report also gives total numbers of products reregistered and products registered under the ''fast-track'' provisions of FIFRA.

II. How can i get a copy of the 2011 report?

1. *Docket.* The 2011 report is available at *http://www.regulations.gov,* under docket ID number EPA–HQ–OPP–2011–0959.

2. *EPA Web site.* The 2011 report is also available on EPA's Web site at *http://www.epa.gov/pesticides/reregistration/reports.htm.*

III. Can I comment on this report?

Although not subject to a formal comment period, EPA welcomes input from stakeholders and the general public. Written comments, identified by the docket identification number EPA–HQ–OPP–2011–0959, would be most helpful if received by EPA on or before 60 days after date of publication of this notice.

Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0959, by one of the following methods:

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

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 21, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–7885 Filed 3–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0542; FRL–9654–9]

Notice of Data Availability Concerning Renewable Fuels Produced from Palm Oil Under the RFS Program; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an extension in the public comment period for the ''Notice of Data Availability Concerning Renewable Fuels Produced from Palm Oil under the RFS Program'' (the notice is herein referred to as the ''palm oil NODA''). EPA published a NODA, which included a request for comment, in the **Federal Register** on January 27, 2012 (77 FR 4300). The public comment period was to end on February 27, 2012—30 days after publication in the **Federal Register**. On February 14, 2012, EPA published a notice extending the comment period by 30 days until March 28, 2012. The purpose of this document is to extend the comment period an additional 30 days until April 27, 2012. This extension of the comment period is provided to allow the public additional time to provide comment on the NODA.

DATES: Comments must be received on or before April 27, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0542, by one of the following methods:

• *www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *Email: a-and-r-docket@epa.gov.*

• *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

• *Hand Delivery:* Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. 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–2011–0542. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or *a-and-r-docket@epa.gov.* The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *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 *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Aaron Levy, Office of Transportation and Air Quality, Transportation and Climate Division, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460 (MC: 6041A); telephone number: 202–564–2993; fax number: 202–564–1177; email address: *levy.aaron@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In a separate notice of data availability, EPA provided an opportunity to comment on EPA's analyses of palm oil used as a feedstock to produce biodiesel and renewable diesel under the Renewable Fuel Standard (RFS) program. EPA's analysis of palm oil-based biofuels is a supplement to the final rule published on March 26, 2010, which made changes to the RFS program (75 FR 14670). EPA's analysis of the two types of biofuel shows that biodiesel and renewable diesel produced from palm oil have estimated lifecycle greenhouse gas (GHG) emission reductions of 17% and 11% respectively for these biofuels compared to the statutory baseline petroleum-based diesel fuel used in the

RFS program. This analysis indicates that both palm oil-based biofuels would not qualify as meeting the minimum 20% GHG performance threshold for renewable fuel under the RFS program. On February 14, 2012, EPA published a notice extending the comment period by 30 days until March 28, 2012 to provide the public additional time to comment on the NODA.

Extension of Comment Period

EPA received requests for an additional extension of the palm oil NODA comment period from various parties. After considering all of these comments, EPA has determined that an extension of the comment period would provide the public adequate time to provide meaningful comment on the NODA. However, this need must be balanced against our desire to finalize our analysis in a timely manner. EPA believes that an additional 30 days is an appropriate amount of time to balance these needs. Accordingly, the public comment period for the palm oil NODA is extended until April 27, 2012. EPA does not anticipate any further extension of the comment period at this time.

Dated: March 27, 2012.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 2012–7895 Filed 3–30–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Submitted to the Office of Management and Budget (OMB) for Emergency Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required b y the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (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 burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 17, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

SUPPLEMENTARY INFORMATION: The Commission is requesting emergency OMB processing of the new information collection requirements contained in this notice. The Commission is requesting OMB approval by April 16, 2012.

OMB Control Number: 3060–XXXX.

Title: Part 11—Emergency Alert System (EAS), Fifth Report and Order, FCC 12–7.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time Per Response: 20 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i) and 606 of the Communications Act of 1934, as amended.

Total Annual Burden: 200 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this new information collection to the Office of Management and Budget (OMB) during this 15 day comment period in order to obtain emergency approval from them. The Commission is requesting emergency OMB approval for this new information collection and assignment of an OMB control number. Part 11 contains rules and regulations addressing the nation's Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the national, state and local area level during periods of national emergency. The EAS also provides state and local governments and the National Weather Service with the capability to provide immediate communications and information to the general public concerning emergency situations posting a threat to life and property. For this new collection, the Commission is requesting emergency OMB review and processing for the reporting and recordkeeping requirements in the Fifth Report and Order, FCC 12–7. The Commission amended its Part 11 rules governing the EAS to more fully codify the existing obligation to process Common Alerting Protocol (CAP)-formatted alert messages adopted in the Second Report and Order.

Certification procedures for meeting general certification requirements are under 47 CFR 11.34. Paragraphs 164–167, 107–171, and 175–176 in the Fifth Report and Order, establish that integrated CAP-capable EAS devices and intermediate devices that are used in tandem with legacy EAS equipment are subject to the Commission's existing device certification requirements set forth in the Commission's Part 2 equipment authorization rules. These paragraphs also establish specific procedures by which EAS device manufacturers can update existing device certifications and obtain new certifications, which generally involve the submission of test data and other materials to the FCC.

The information collected by the Commission is used to confirm that EAS devices comply with the technical and performance requirements set forth in the EAS rules and other applicable rules maintained by the Commission. These rules are designed to minimize electrical

radiofrequency interference and to ensure that the EAS, including individual devices within the EAS, operate at intended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–7970 Filed 3–30–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: March 26, 2012.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10430	Covenant Bank & Trust	Rock Spring	GA	3/23/2012
10431	Premier Bank	Wilmette	IL	3/23/2012

[FR Doc. 2012–7810 Filed 3–30–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 17, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Bobbie R. Needham, Broken Arrow, Oklahoma; Matthew K. Needham and Amanda L. Needham, both of Basehor, Kansas; Michael L. Needham and Andrea M. Needham, both of Olathe Kansas; and Russ A. Hoffman and Megan L. Hoffman, both of Wichita, Kansas, all as members of the Needham Family Group,* to retain control of Overbrook Bankshares, Inc., and thereby indirectly retain control of The First Security Bank, both in Overbrook, Kansas.

Board of Governors of the Federal Reserve System, March 28, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–7801 Filed 3–30–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Wells Financial Corp.,* Wells, Minnesota, has applied to become a bank holding company as a result of the proposed conversion of its wholly owned subsidiary, Wells Federal Bank, Wells, Minnesota, from a federal savings bank to a Minnesota state-chartered commercial bank.

Board of Governors of the Federal Reserve System, March 28, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–7802 Filed 3–30–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Stakeholder Listening Session in Preparation for the 65th World Health Assembly

Time and Date: April 30, 2012, 3 p.m.–4:30 p.m. EST.

Place: Great Hall of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington DC 20201.

Status: Open, but requiring RSVP to *OGA.RSVP@hhs.gov.*

Purpose

The U.S. Department of Health and Human Services (HHS)—charged with leading the U.S. delegation to the 65th World Health Assembly—will hold an informal Stakeholder Listening Session on *Monday April 30, 3–4:30 p.m.,* in the Great Hall of the HHS Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201.

The Stakeholder Listening Session will help the HHS's Office of Global Affairs prepare for the World Health Assembly by taking full advantage of the knowledge, ideas, feedback, and suggestions from all communities interested in and affected by agenda items to be discussed at the 65th World Health Assembly. Your input will contribute to US positions as we negotiate these important health topics with our international colleagues.

The listening session will be organized around the interests and perspectives of stakeholder communities, including, but not limited to:

- Public health and advocacy groups;
- State, local, and Tribal groups;
- Private industry;
- Minority health organizations; and
- Academic and scientific organizations.

It will allow public comment on all agenda items to be discussed at the 65th World Health Assembly *http://apps.who.int/gb/ebwha/pdf_files/WHA65/A65_1-en.pdf.*

RSVP

Due to security restrictions for entry into the HHS Hubert H. Humphrey Building, we will need to receive RSVPs for this event. Please include your first and last name as well as organization and send it to *OGA.RSVP@hhs.gov.* If you are *not* a US citizen please note this in the subject line of your RSVP, and our office will contact you to gain additional biographical information for your clearance. Please RSVP no later than Friday April 20th.

Written comments are welcome and encouraged, even if you are planning on attending in person. Please send these to the same email address *OGA.RSVP@hhs.gov.*

We look forward to hearing your comments relative to the 65th World Health Assembly agenda items.

Dated: March 26, 2012.

Nils Daulaire,

Director, Office of Global Affairs.

[FR Doc. 2012–7738 Filed 3–30–12; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Financial Resources; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended as Chapter AM, Office of Financial Resources, as last amended at 76 FR 69741–42, dated November 9, 2011, 74 FR 57679–82, dated November 9, 2009, and 74 FR 18238–39, dated April 21, 2009. This reorganization will eliminate the Office of Recovery Act Coordination (AMV) within the Office of Financial Resources (ASFR)) and establish a new Office of Executive Program Information in ASFR to analyze HHS data on the status of HHS programs and their operations and present it to HHS executives to inform program and policy decisions. This reorganization will make the following changes under Chapter AM, Office of Financial Resources:

A. Under Section AM.10 Organization, delete in its entirety and replace with the following:

Section AM.10 Organization: The Office of Financial Resources is headed by the Assistant Secretary for Financial Resources (ASFR). The Assistant Secretary for Financial Resources is the Departmental Chief Financial Officer (CFO), Chief Acquisition Officer (CAO) and Performance Improvement Officer (PIO), and reports to the Secretary. The office consists of the following components:

- Immediate Office of the Assistant Secretary (AM).
- Office of Budget (AML).
- Office of Finance (AMS).
- Office of Grants and Acquisition Policy and Accountability (AMT).
- Office of Executive Program Information (AMW).

B. Under Section AM.20 Functions, delete in its entirety Chapter AMV and add the following new Chapter AMW, Office of Executive Program Information

Section AMW.00 Mission

The Office of Executive Program Information (OEPI) is responsible for analyzing HHS data on the status of HHS programs and their operations and presenting it to HHS executives to inform program and policy decisions. The primary audience for these analyses is HHS executives including HHS senior leadership, both in the Office of the Secretary and the agencies. The information requirements of ASFR executives are a priority focus because of their policy role in resource allocation and decisions affecting financial, grants and procurement processes.

OEPI collaborates with ASFR offices and HHS agencies to obtain the data elements needed to meet HHS leadership's management information expectations and the business requirements of ASFR Offices and their customers in HHS OPDIVS. OEPI convenes ASFR Offices and HHS OPDIVS to develop procedures for obtaining quality data needed to assess HHS operations, and the business requirements of ASFR Offices and their customers in HHS OPDIVS.

Section AMW.10 Organization

The Office of Executive Program Information is headed by a Deputy Assistant Secretary for Executive Program Information, who reports to the Assistant Secretary for Financial Resources. OEPI includes the following components:

- Immediate Office of Executive Program Information (AMW).
- Division of Health Insurance, Regulation, and Science Programs (AMW1).
- Division of Health and Social Service Programs (AMW2).

Section AMW.20 Function

1. Immediate Office of Executive Program Information (AMW)

The Immediate Office of Executive Program Information (OEPI) is responsible for support and coordination of the Office of Executive Program Information components in the management of their responsibilities.

2. Division of Health Insurance, Regulation, and Science Programs (AMW1)

The Division of Health Insurance, Regulation, and Science Programs is responsible for establishing systems and procedures for analyzing data on the status of HHS health insurance, regulation, and science programs and

their operations, conducting analysis, and presenting that analysis to HHS executives to inform program and policy decisions.

3. Division of Health and Social Service Programs (AMW2)

The Division of Health and Social Service Programs is responsible for establishing systems and procedures for analyzing data on the status of HHS health and social services programs and their operations, conducting analysis, and presenting that analysis to HHS executives to inform program and policy decisions.

Dated: March 22, 2012.

E.J. Holland, Jr.,

Assistant Secretary for Administration.

[FR Doc. 2012–7807 Filed 3–30–12; 8:45 am]

BILLING CODE 4150– 24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Development of a Health Information Rating System (HIRS).'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by June 1, 2012.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRO.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Development of a Health Information Rating System (HIRS)

Over the past several years, limited health literacy has been identified as an important health care quality issue. Healthy People 2010 defined health literacy as 'the degree to which individuals have the capacity to obtain, process, and understand basic health information and services needed to make appropriate health decisions'. In 2003, the Institute of Medicine identified health literacy as a cross-cutting area for health care quality improvement. According to the 2003 National Assessment of Adult Literacy, only 12 percent of adults have proficient health literacy.

Persons with limited health literacy face numerous health care challenges. They often have a poor understanding of basic medical vocabulary and health care concepts. A study of patients in a large public hospital showed that 26 percent did not understand when their next appointment was scheduled and 42 percent did not understand instructions to ''take medication on an empty stomach.'' In addition, limited health literacy leads to more medication errors, more and longer hospital stays, and a generally higher level of illness.

Health care providers can improve their patients' health outcomes by delivering the right information at the right time in the right way to help patients prevent or manage chronic conditions such as diabetes, cardiovascular disease, hypertension, and asthma. Electronic health records (EHRs) can help providers offer patients the right information at the right time during office visits, by directly connecting patients to helpful resources on treatment and self-management. EHRs can also facilitate clinicians' use of patient health education materials in the clinical encounter. However, health education materials delivered by EHRs, when available, are rarely written in a way that is understandable and actionable for patients with basic or below basic health literacy—an estimated 77 million people in the United States.

In order to fulfill the promise of EHRs for all patients, especially for persons with limited health literacy, clinicians should have a method to determine how easy a health education material is for patients to understand and act on, have access to a library of easy-to-understand and actionable materials, understand the relevant capabilities and features of EHRs to provide effective patient education, and be made aware of these resources and information. Therefore, AHRQ developed a task order that resulted in contract #HHSA290200900012I to complete the following four major tasks: (1) Develop a valid and reliable Health Information Rating System (HIRS), (2) create a library of patient health education materials, (3) review EHR's patient education capabilities and features, and (4) educate EHR vendors and users. This information collection project relates to the first task only.

The goal of this information collection project is to develop a valid and reliable Health Information Rating System (HIRS). The HIRS will offer a systematic method to evaluate and compare the understandability and actionability of health education materials. Health education materials are understandable when consumers of diverse backgrounds and varying degrees of health literacy can process and explain key messages. Health education materials are actionable when consumers of diverse backgrounds and varying levels of health literacy can identify what they can do based on the information presented.

A Draft HIRS has been developed through a rigorous multi-stage approach and draws upon existing rating systems, the evidence base in the literature, and the real-world expertise and experience of a Technical Expert Panel (TEP). The final stage of developing a reliable and valid rating system to assess the understandability and actionability of patient health education materials is testing with consumers. AHRQ is following a 5-step process to develop a valid and reliable HIRS:

(1) Gather and synthesize evidence on existing rating systems and literature on consumers' understanding of health information. Seek TEP review of the summary of existing health information rating systems. Develop item pool for each domain (i.e., understandability and actionability).

(2) Assess the face and content validity of the domains (i.e., understandability and actionability) with the TEP.

(3) Assess the inter-rater reliability of the HIRS on 16 different health education materials (8 English-language materials and 8 Spanish-language materials) using a total of 8 raters —4 raters per material. Seek TEP review of results and provide guidance on how to address discrepancies.

(4) Assess the construct validity of the HIRS by conducting testing with 48 consumers — 24 English-speaking and 24 Spanish-speaking consumers. Consumers will review materials and be asked questions to test whether they

understand the materials and whether they know what actions to take.

(5) Finalize the HIRS and instructions for users, and make them publicly available on AHRQ's Web site.

Steps 1, 2 and 3 do not involve data collections requiring OMB approval and have already been completed.

This study is being conducted by AHRQ through its contractor, Abt Associates, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To complete steps 4 and 5 the following data collections and activities will be implemented:

(1) Demographic Questionnaire—The demographic questionnaire will collect basic demographic information about each consumer participant. This data will allow the analysis to detect differences in health literacy by population subgroups.

(2) Short Test of Functional Health Literacy in Adults (S–TOFHLA) Questionnaire—The S–TOFHLA will be administered to all participants to access their level of health literacy.

(3) Health Education Materials & Interview—English, Inhaler—Each English-speaking participant will be randomly assigned one of a set of three materials on using asthma inhalers, which include: (1) A video entitled ''How to Use an Inhaler,'' by the American College of Physicians Foundation, (2) a material accessed via the internet entitled ''Inhaled Asthma Medications: Tips to Remember,'' by the American Academy of Allergy, Asthma & Immunology, and (3) a material accessed via the internet entitled ''How to Use Your Metered-Dose Inhaler the Right Way,'' by the McKinley Health Center. After seeing the video or reading the randomly assigned material, a brief interview will be conducted to assess the participants' understanding of how to use an inhaler and what actions to take based on the material.

(4) Health Education Materials & Interview—English, Colonoscopy—Each English-speaking participant will be randomly assigned one of a set of three materials about colonoscopy, which include: (1) A video entitled ''Colonoscopy,'' by Medline Plus, (2) a pdf material accessed via the internet entitled ''Colonoscopy,'' by the American College of Surgeons and (3) a material accessed via the interne entitled, ''Colonoscopy,'' by Jackson Siegelbaum Gastroenterology. After seeing the video or reading the randomly assigned material, a brief interview will be conducted to assess the participants' understanding of the colonoscopy procedure and what actions to take based on the material.

(5) Health Education Materials & Interview—Spanish, High Blood Pressure—Each Spanish-speaking participant will be randomly assigned one of a set of three materials about high blood pressure, which include: (1) A video entitled ''Hipertension esencial,'' by Medline Plus, (2) a Web site material accessed via the internet entitled ''¿Que es la presión arterial alta?,'' by the National Heart Lung and Blood Institute (NHLBI) and (3) a pdf material accessed via the internet entitled, ''Presion Sanguinea Alta,'' by the National Center for Farmworker Health. After seeing the video or reading the randomly assigned material, a brief interview will be conducted to assess the participants' understanding of high blood pressure and what actions to take based on the material.

(6) Health Education Materials & Interview—Spanish, Colonoscopy—Each Spanish-speaking participant will be randomly assigned one of a set of three materials about colonoscopy, which include: (1) A video entitled ''Colonoscopia,'' Main Line Health, (2) a pdf material accessed via the internet entitled ''Colonoscopia: Lo Que Usted Debe Saber,'' by the Nebraska Department of Health and Human Services (DHHS) and (3) a material accessed via the internet entitled, ''Colonoscopía,'' by Centro Medicao ABC. After seeing the video or reading the randomly assigned material, a brief interview will be conducted to assess the participants' understanding of the colonoscopy procedure and what actions to take based on the material.

The data collected from this project will be used to assess the construct validity of and inform revisions to the HIRS. The HIRS will be the first system that can assess the understandability and actionability of patient health education materials that can be incorporated into an EHR, including print and multimedia materials. Note that the materials to be assessed need not currently be incorporated into EHRs; for now, AHRQ is focusing on materials that have the potential to be incorporated into EHRs.

No claim is made that the results from this study will be generalizable in the statistical sense. Rather, the consumer testing will be informative and critical to ensuring we have developed a valid rating system by conducting consumer testing.

Estimated Annual Respondent Burden

Exhibit 1 presents estimates of the annualized burden hours for the respondents' time to participate in this research. The Demographic and S–TOFHLA questionnaires will be completed by all 48 participants and takes 5 and 7 minutes, respectively, to complete. Each of the 48 participants will review 2 different sets of health education materials and then participate in a short interview for each material topic. English-speaking participants will review materials related to inhaler use and colonoscopy while Spanish-speaking participants will review materials related to high blood pressure and colonoscopy. To review each material and participate in the associated interview requires 30 minutes (15 minutes to review the materials and 15 minutes for the interview). The total annualized burden is estimated to be 58 hours.

Exhibit 2 presents the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated at $962.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Demographic Questionnaire	48	1	5/60	4
S-TOFHLA Questionnaire	48	1	7/60	6
Health Education Materials & Interview—English, Inhaler	24	1	30/60	12
Health Education Materials & Interview —English & Spanish, Colonoscopy	48	1	30/60	24
Health Education Materials & Interview—Spanish, High Blood Pressure	24	1	30/60	12

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Total	192	na	na	58

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Demographic Questionnaire	48	4	$21.35	$85
S-TOFHLA Questionnaire	48	6	21.35	128
Health Education Materials & Interview—English, Inhaler	24	12	21.35	256
Health Education Materials & Interview —English & Spanish, Colonoscopy	48	24	21.35	512
Health Education Materials & Interview—Spanish, High Blood Pressure	24	12	21.35	256
Total	192	58	na	1,237

*Based upon the mean wage for all occupations, National Compensation Survey: Occupational wages in the United States May 2010, "U.S. Department of Labor, Bureau of Labor Statistics."

Estimated Annual Costs to the Federal Government

The total cost of this contract to the government is $524,945, and the project extends over 3 years (July 19, 2010 to July 18, 2013). The data collection for which we are seeking OMB clearance will take place from September 1, 2012 to December 31, 2012. Exhibit 3 shows a breakdown of the total cost as well as the annualized cost for the data collection, processing and analysis activity for this entire contract.

EXHIBIT 3—ESTIMATED COST

Cost Component	Total Cost	Annual Cost
Project Development	$66,447	$22,149
Data Collection Activities	129,547	43,182
Data Processing and Analysis	129,548	43,183
Publication of Results	131,571	43,857
Project Management	67,832	22,611
Total	524,945	174,982

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 22, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–7768 Filed 3–30–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurodegeneration: Mechanisms and Therapeutic Targets.

Date: April 17, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Laurent Taupenot, Ph.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis

Panel; Member conflict: Chemosensory, Pain and Hearing.

Date: April 18–19, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7821 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0294]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Contact Substance Notification Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information associated with the Food Contact Substance Notification Program, including revisions to Form FDA 3480, new Form FDA 3480A, and electronic submission via the Electronic Submission Gateway (ESG).

DATES: Submit either electronic or written comments on the collection of information by May 29, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: With regard to the information collection: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

With regard to the Food Contact Substance Notification Program: Kenneth A. McAdams, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy (HFS–275), College Park, MD 20740, 240–402–1224, Fax: 301–436–2965, email: *Kenneth.mcadams@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Contact Substance Notification Program—21 CFR 170.101, 170.106, and 171.1 (OMB Control Number 0910–0495)—Revision

Section 409(h) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(h)) establishes a premarket notification process for food contact substances. Section 409(h)(6) of the FD&C Act defines a ''food contact substance'' as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.'' Section 409(h)(3) of the FD&C Act requires that the notification process be used for authorizing the marketing of food contact substances except when: (1) FDA determines that the submission and premarket review of a food additive petition (FAP) under section 409(b) of the FD&C Act is necessary to provide adequate assurance of safety or (2) FDA and the manufacturer or supplier agree that an FAP should be submitted. Section 409(h)(1) of the FD&C Act requires that a notification include: (1) Information on the identity and the intended use of the food contact substance and (2) the basis for the manufacturer's or supplier's determination that the food contact substance is safe under the intended conditions of use.

Sections 170.101 and 170.106 (21 CFR 170.101 and 170.106) specify the information that a notification must contain and require that: (1) A food contact substance notification (FCN) include a completed and signed Form FDA 3480 and (2) a notification for a food contact substance formulation include a completed and signed Form FDA 3479. These forms serve to summarize pertinent information in the notification. The forms facilitate both preparation and review of notifications because the forms serve to organize information necessary to support the safety of the use of the food contact substance. The burden of filling out the appropriate form has been included in the burden estimate for the notification.

Currently, interested persons transmit an FCN submission to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition using Form FDA 3480 whether it is submitted in electronic or paper format. FDA recently made minor revisions to Form FDA 3480 to better enable its use for electronic submission and to prompt

FCN submitters to include certain information in a standard format. FDA estimates that the revisions to Form FDA 3480 will not change the amount of time necessary to complete the form.

In addition to its required use with FCNs, revised Form FDA 3480 is recommended to be used to organize information within a Pre-notification Consultation or Master File submitted in support of an FCN according to the items listed on the form. Master Files can be used as repositories for information that can be referenced in multiple submissions to the Agency, thus minimizing paperwork burden for food contact substance authorizations. FDA estimates that the amount of time for respondents to complete the revised Form FDA 3480 for these types of submissions will be 0.5 hours.

FDA has recently developed a new form, which the Agency recommends be used with each submission of additional information (i.e. amendment) to an FCN submission currently under Agency review, as well as be used to submit an amendment to a Pre-notification Consultation, or for an amendment to Master File in support of an FCN, whether submitted in electronic format or paper format. New Form FDA 3480A is entitled ''Amendment to an Existing Food Contact Substance Notification, a Pre-Notification Consultation, or a Food Master File.'' The form, and elements that would be prepared as attachments to the form, can be submitted in electronic format. Form FDA 3480A helps the respondent organize their submission to focus on the information needed for FDA's safety review. FDA estimates that the amount of time for respondents to complete the new Form FDA 3480A will be 0.5 hours because the new form, used solely for transmitting an amendment, is much shorter than Form FDA 3480. Amendments include the following information on new Form FDA 3480A and in attachments to the form:

- Date of submission;
- Whether the notifier has determined that all files provided in an electronic transmission are free of computer viruses;
- Whether the submission is an amendment to an FCN submission, a pre-notification consultation, or a master file;
- The format of the submission (i.e., ESG, transmission on electronic physical media such as CD–ROM or DVD, or paper);
- The name of and contact information for the submitter, including the identity of the contact person and the company name (if applicable);
- The name of and contact information for any agent or attorney who is authorized to act on behalf of the notifier; and
- A brief description of the information provided and the purpose(s) of the amendment.

Section 171.1 (21 CFR 171.1) specifies the information that a petitioner must submit in order to: (1) Establish that the proposed use of an indirect food additive is safe and (2) secure the publication of an indirect food additive regulation in parts 175 through 178 (21 CFR parts 175 through 178). Parts 175 through 178 describe the conditions under which the additive may be safely used.

In addition, FDA's guidance document entitled ''Use of Recycled Plastics in Food Packaging: Chemistry Considerations'' provides assistance to manufacturers of food packaging in evaluating processes for producing packaging from post-consumer recycled plastic. The recommendations in the guidance address the process by which manufacturers certify to FDA that their plastic products are safe for food contact.

Description of Respondents: The respondents to this information collection are manufacturers of food contact substances.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section or other category	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
170.106 [2] (Category A)	FDA 3479	5	1	5	2	10
170.101 [3] [7] (Category B)	FDA 3480	5	1	5	25	125
170.101 [4] [7] (Category C)	FDA 3480	5	2	10	120	1,200
170.101 [5] [7] (Category D)	FDA 3480	33	2	66	150	9,900
170.101 [6] [7] (Category E)	FDA 3480	30	1	30	150	4,500
Pre-notification Consultation or Master File (concerning a food contact substance) [8]	FDA 3480	60	1	60	0.5	30
Amendment to an existing notification (170.101), amendment to a Pre-notification Consultation, or amendment to a Master File (concerning a food contact substance) [9]	FDA 3480A	50	1	50	0.5	25
171.1 Indirect Food Additive Petitions.	N/A	1	1	1	10,995	10,995
Use of Recycled Plastics in Food Packaging: Chemistry Considerations.	N/A	10	1	10	25	250
Total						27,035

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Notifications for food contact substance formulations and food contact articles. These notifications require the submission of Form FDA 3479 (''Notification for a Food Contact Substance Formulation'') only.
[3] Duplicate notifications for uses of food contact substances.
[4] Notifications for uses that are the subject of exemptions under 21 CFR 170.39 and very simple food additive petitions.
[5] Notifications for uses that are the subject of moderately complex food additive petitions.
[6] Notifications for uses that are the subject of very complex food additive petitions.
[7] These notifications require the submission of Form FDA 3480.
[8] These notifications recommend the submission of Form FDA 3480.
[9] These notifications recommend the submission of Form FDA 3480A.

The forms in table 1 of this document, and elements that would be prepared as attachments to the forms, may be submitted in electronic format via the ESG; email, if appropriate; or may be submitted in paper format, or as electronic files on physical media with paper signature page. FDA expects that most if not all businesses filing these submissions in the next 3 years will choose to take advantage of the option of electronic submission. Thus, the burden estimates in table 1 of this document are based on the expectation of 100 percent participation in the electronic submission process. The opportunity to provide the information in electronic format could reduce the Agency's previous estimates for the time to prepare each submission. However, as a conservative approach for the purpose of this analysis, FDA is assuming that the availability of the revised or new forms and the opportunity to submit the information in electronic format will have no effect on the average time to prepare a submission.

These estimates are based on FDA's experience with the food contact substance notification program. Based on input from industry sources, FDA estimates that approximately five respondents will submit one notification annually for food contact substance formulations (Form FDA 3479), for a total of five responses. FDA estimates the reporting burden to be 2.0 hours per response, for a total burden of 10 hours. FDA also has included five expected duplicate submissions in the second row of table 1 of this document. FDA expects that the burden for preparing these notifications primarily will consist of the manufacturer or supplier filling out Form FDA 3480, verifying that a previous notification is effective, and preparing necessary documentation. Thus, FDA estimates that five respondents will submit one such submission annually, for a total of five responses. FDA estimates the reporting burden to be 25.0 hours per response, for a total burden of 125 hours.

Based on the submissions received, FDA identified three other tiers of FCNs that represent escalating levels of burden required to collect information (denoted as categories C, D, and E in the third, fourth, and fifth rows of table 1 of this document). FDA estimated the median number of hours necessary for collecting information for each type of notification within each of the three tiers based on input from industry sources. FDA estimates that 5 respondents will submit two category C submissions annually, for a total of 10 responses. FDA estimates the reporting burden to be 120 hours per response, for a total burden of 1,200 hours. FDA estimates that 33 respondents will submit two Category D submissions annually, for a total of 66 responses. FDA estimates the reporting burden to be 150 hours per response, for a total burden of 9,900 hours. FDA estimates that 30 respondents will submit one Category E submission annually, for a total of 30 responses. FDA estimates the reporting burden to be 150 hours per response, for a total burden of 4,500 hours.

Based on the submissions received, FDA estimates that 60 respondents will submit information to a pre-notification consultation or a master file in support of FCN submission using Form FDA 3480. FDA estimates the reporting burden to be 0.5 hours per response, for a total burden of 30 hours.

Based on the submissions received, FDA estimates that 50 respondents will submit an amendment (Form FDA 3480A) to a substantive or non-substantive request of additional information to an incomplete FCN submission, for an amendment to a pre-notification consultation, or for an amendment to a master file in support of an FCN. FDA estimates the reporting burden to be 0.5 hours per response, for a total burden of 25 hours.

Based on the submissions received, FDA estimates that one respondent will submit one indirect food additive petition under § 171.1, for a total of one response. FDA estimates the reporting burden to be 10,995 hours per response, for a total burden of 10,995 hours.

FDA estimates that 10 respondents will utilize the recommendations in the guidance document entitled ''Use of Recycled Plastics in Food Packaging: Chemistry Considerations,'' to develop the additional information for one such submission annually, for a total of 10 responses. FDA estimates the reporting burden to be 25 hours per response, for a total burden of 250 hours.

As noted, FDA estimates that all of the future Form FDA 3479, 3480, and 3480A submissions will be made electronically via the ESG. While FDA does not charge for the use of the ESG, FDA requires respondents to obtain a public key infrastructure certificate in order to set up the account. This can be obtained in-house or outsourced by purchasing a public key certificate that is valid for 1 year to 3 years. The certificate typically costs from $20-$30.

Dated: March 27, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–7764 Filed 3–30–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0618]

Draft Guidances Relating to the Development of Biosimilar Products; Public Hearing; Request for Comments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 2, 2012 (77 FR 12853). The document announced a public hearing entitled ''Draft Guidances Related to the Development of Biosimilar Products; Public Hearing; Request for Comments'' to obtain input on recently issued draft guidances relating to the development of biosimilar products. The document published with an incorrect date for submission of electronic and written comments. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Sandra J. Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6340, Silver Spring, MD 20993–0002, 301–796–1042, Fax: 301–847–3529, email: *biosimilarspublicmtg@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. 2012–5070, appearing on page 12853, in the **Federal Register** of Friday, March 2, 2012, the following correction is made:

On page 12853, in the second column, in the **DATES** section, the last sentence is corrected to read: ''Electronic or written comments will be accepted after the public hearing until May 25, 2012.''

Dated: March 26, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–7756 Filed 3–30–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Pediatric 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: Pediatric 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 May 7, 2012, from 8 a.m. to 5:30 p.m. and May 8, 2012, from 8:30 a.m. to 11:30 a.m.

Location: Hilton Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Walter Ellenberg, Office of Pediatric Therapeutics, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5154, Silver Spring, MD 20993, 301–796–0885, 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 May 7, 2012, the Pediatric Advisory Committee will meet to discuss pediatric-focused safety reviews, as mandated by the Best Pharmaceuticals for Children Act and the Pediatric Research Equity Act, for Differin Lotion (adapalene), Dulera Inhalation Aerosol (mometasone furoate and formotorol fumarate), MultiHance Injection (gadobenate dimeglumine), Nasonex (mometasone furoate monohydrate), Natazia (estradiol valerate and estradiol valerate/dienogest), Omnaris Nasal Spray (ciclesonide), Protonix (pantoprazole), Tamiflu (oseltamivir phosphate), Taxotere (docetaxel) and Viread (tenofovir disoproxil fumarate). The committee will also receive an Informational Update on FDA's KidNet pilot study.

On May 8, 2012, the Pediatric Advisory Committee will meet regarding the pediatric-focused safety reviews, as mandated by the Pediatric Research Equity Act, for Gardasil Human Papillomavirus Quadrivalent (Types 6, 11, 16, 18) Vaccine, Recombinant, Isopto Carpine (pilocarpine hydrochloride), Menveo Meningococcal (Group A,C,Y, and W–135) Oligosaccharide Diphtheria CRM197 Conjugate Vaccine, Zylet (loteprednol etabonate and tobramycin) and Zymaxid (gatifloxacin).

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 April 30, 2012. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m. on May 7, 2012. 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 April 20, 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 April 23, 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 Walter Ellenberg 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: March 23, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–7765 Filed 3–30–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Generic Clearance To Conduct Voluntary Customer/Partner Surveys

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Library of Medicine (NLM), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Generic Clearance to Conduct Voluntary Customer/Partner Surveys; *Type of Information Collection Request:* Extension of currently approved collection [OMB No. 0925–0476, expiration date 06/30/2012], *Form Number:* NA; *Need and Use of Information Collection::* Executive Order 12962 directed agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Additionally, since 1994, the NLM has been a ''Federal Reinvention Laboratory'' with a goal of improving its methods of delivering information to the public. An essential strategy in

accomplishing reinvention goals is the ability to periodically receive input and feedback from customers about the design and quality of the services they receive.

The NLM provides significant services directly to the public including health providers, researchers, universities, other federal agencies, state and local governments, and to others through a range of mechanisms, including publications, technical assistance, and Web sites. These services are primarily focused on health and medical information dissemination activities. The purpose of this submission is to obtain OMB's generic approval to continue to conduct satisfaction surveys of NLM's customers. The NLM will use the information provided by individuals and institutions to identify strengths and weaknesses in current services and to make improvements where feasible. The ability to periodically survey NLM's customers is essential to continually update and upgrade methods of providing high quality service. *Frequency of Response:* Annually or biennially. *Affected Public:* Individuals or households; businesses or other for profit; state or local governments; Federal agencies; non-profit institutions; small businesses or organizations. *Type of Respondents:* Organizations, medical researchers, physicians and other health care providers, librarians, students, and the general public. The annual reporting burden is as follows:

Types of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Researchers, Physicians, Other Health Care Providers, Librarians, Students, General Public	15,000	1	.150	2,250

The annualized cost to respondents for each year of the generic clearance is estimated to be $20,670. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: David Sharlip, National Library of Medicine, Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number 301–402–9680 or Email your request to *sharlipd@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: March 27, 2012.

David H. Sharlip,

NLM Project Clearance Liaison, National Library of Medicine, National Institutes of Health.

[FR Doc. 2012–7831 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Grants for Behavioral Research in Cancer Control (R03).

Date: June 7, 2012.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ellen K Schwartz, EDD, MBA, Scientific Review Officer,Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard Room 8055B, Bethesda, MD 20892–8329, 301–594–1215, *schwarel@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Molecular Analysis Technologies for Cancer (R21).

Date: June 26–27, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard Room 8059, Bethesda, MD 20892–8329, 301–496–7904, *decluej@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7824 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: May 15–16, 2012.

Closed: May 15, 2012, 12 p.m. to 12:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: May 15, 2012, 1 p.m. to 4 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: May 15, 2012, 4:30 p.m. to 6 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: May 16, 2012, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: May 16, 2012, 8:30 a.m. to 12 p.m..

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: May 16, 2012, 12 p.m. to 1:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: May 16, 2012, 1:15 p.m. to 3:15 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: May 16, 2012, 3:15 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Contact Person: Luigi Ferrucci, PhD, MD, Scientific Director, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 4C225, Baltimore, md 21224, 410–558–8110, *LF27Z@NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7827 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering, NACBIB May, 2012.

Date: May 21, 2012.

Open: 9 a.m. to 1 p.m.

Agenda: Report from the Institute Director, other Institute Staff and scientific presentation.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Conference Room 849, Bethesda, MD 20892.

Closed: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Conference Room 849, Bethesda, MD 20892.

Contact Person: Anthony Demsey, Ph.D., Director, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 241, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: March 26, 2012.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7829 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA–MH12–130: Basic Research on Decision Making: Cognitive, Affective and Developmental Perspectives.

Date: April 27, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Melissa Gerald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group Biomaterials and Biointerfaces Study Section.

Date: May 3–4, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Joseph D Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7842 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ZHD1 RRG–K 52 1, Rehabilitation Research Career Development Programs.

Date: April 17, 2012.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Anne Krey, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6908, *ak41o@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7838 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Population Research Infrastructure Program (RIP).

Date: April 20, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carla T. Walls, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6898, *wallsc@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7832 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Autism and Related Disorders

Date: April 24, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd. Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7834 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Epidemiology of Diabetes.

Date: April 19, 2012.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, PO1 Applications.

Date: June 18, 2012.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: D. G. PATEL, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, DP3 Reviews.

Date: June 28–29, 2012.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: D. G. PATEL, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 26, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7833 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the cooperative agreement applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 DSG–H 53 1.

Date: April 16–17, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David H. Weinberg, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Rockville, MD 20852, 301–435–6973, *David.Weinberg@nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 26, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7830 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID, AIDS Vaccine Research Subcommittee.

Date: May 15–16, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To update the Subcommittee on the use of the nonhuman primate model for AIDS vaccine research and to summarize and discuss plans for the two recently awarded Consortia for AIDS Vaccine Research in Nonhuman Primates.

Place: National Institutes of Health, 5635 Fishers Lane, Conference Rooms 508–510, Bethesda, MD 20892.

Contact Person: James A. Bradac, Ph.D., Program Official, Preclinical Research and Development Branch, Division of AIDS,

Room 5116, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7628, 301–435–3754, *jbradac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 26, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7828 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; NIH Loan Repayment Program for Clinical and Pediatric Research.

Date: April 27, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive Room 3An18B, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Margaret J. Weidman, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive Room 3An18B, Bethesda, MD 20892, 301–594–3663, *weidmanma@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7825 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodegeneration.

Date: April 11, 2012.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 2012–7823 Filed 3–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0220]

Cooperative Research and Development Agreement: Asset Tracking and Reporting Technology

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for public comments.

SUMMARY: The Coast Guard is announcing its intent to enter into a Cooperative Research and Development Agreement (CRADA) with General Dynamics C4 Systems, Inc. (General Dynamics), to test, evaluate, and document the strengths and weaknesses of at least one technical approach for exchanging asset position, status, and brief collaborative messages between the Coast Guard Incident Command Staff (ICS), deployed Coast Guard and non-Coast Guard personnel, and other mobile assets which are engaged within an ICS managed, Incident of National Significance Response. While the Coast Guard is currently considering partnering with General Dynamics, we are soliciting public comment on the nature of and participation of other parties in the proposed CRADA. In addition, the Coast Guard also invites other potential participants to submit proposals for consideration in similar CRADAs.

DATES: Comments and related material on the proposed CRADA must either be submitted to our online docket via *http://www.regulations.gov* on or before May 2, 2012, or reach the Docket Management Facility by that date. Notifications from parties interested in participating as a non-Federal participant in a CRADA similar to the one described in this notice must reach the Docket Management Facility on or before May 2, 2012.

ADDRESSES: You may submit written comments on this notice identified by docket number USCG–2012–0220 using any one of the following methods:

(1) *Federal eRulemaking 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.

Do not submit detailed proposals for different CRADAs to the Docket Management Facility. Instead, if you are interested in being a non-Federal participant in a different CRADA, you may submit detailed proposals to Ms. Monica Cisternelli, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320 email: *Monica.M.Cisternelli@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this notice or desire to submit a CRADA proposal, please contact Ms. Monica Cisternelli, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2741, email: *Monica.M.Cisternelli@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on this notice. 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 notice (USCG–2012–0220) 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* and type ''USCG–2012–0220'' in the ''Keyword'' box. 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.

Viewing Comments and Related Material

To view the comments and related material, 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–2012–0220'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

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, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Cooperative Research and Development Agreements

Cooperative Research and Development Agreements (CRADAs), are authorized by the Federal Technology Transfer Act of 1986 (Pub. L. 99–502, codified at 15 U.S.C. 3710(a)). A CRADA promotes the transfer of technology to the private sector for commercial use as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding. The Department of Homeland Security (DHS), as an executive agency under 5 U.S.C. 105, is a Federal agency for purposes of 15 U.S.C. 3710(a) and may enter into a CRADA. DHS delegated its authority to the Commandant of the Coast Guard (see DHS Delegation No. 0160.1, para. 2.B(34)), and the Commandant has delegated his authority to the Coast Guard's Research and Development Center (R&DC).

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with other types of agreements such as procurement contracts, grants, and cooperative agreements.

Goal of Proposed CRADA

Under the proposed CRADA, the Coast Guard's R&DC would collaborate with non-Federal participants. Together, the R&DC and the non-Federal participants would test, evaluate, and document the strengths and weaknesses of at least one technical approach for exchanging asset position, status, and brief collaborative messages between the Coast Guard Incident Command Staff (ICS), deployed Coast Guard and non-Coast Guard personnel, and other mobile assets, which are engaged within an ICS-managed, Incident of National Significance (IONS) Response. The CRADA partners will determine the viability of technical approaches for asset tracking and non-verbal communications exchange by conducting a live test in conjunction with a Coast Guard response exercise. The response exercise will utilize emergency personnel, such as Oil Spill Response Organizations (OSROs) and non-Federal CRADA partner-provided handheld devices and interoperable communications technology.

Party Contributions

We anticipate that the Coast Guard's contributions under the proposed CRADA will include the following:

(1) Provide CRADA partners with access to, and appropriate use of Coast Guard assets, facilities and personnel engaged in a Coast Guard response exercise;

(2) Provide CRADA partners with all necessary approvals and access for their installation of the asset tracking and non-verbal communications exchange technology on at least one Coast Guard vessel or shore facility; and

(3) Develop the Technology Demonstration Concept Document, Technology Test Objectives, Test Plan, and Project Report for the CRADA work.

We anticipate that the non-Federal participants' contributions under the proposed CRADA will include the following:

(1) Provide appropriate input to the R&DC for the development of the Technology Demonstration Concept Document, Technology Test Objectives, Test Plan, and Project Report;

(2) Provide, install, operate, maintain, and remove all material (including hardware, software, and test equipment), along with the associated labor, needed for the Technology Demonstration as set forth within the Test Plan; and

(3) Provide the R&DC with a Test Report documenting the results of the Technology Demonstration.

Selection Criteria

The Coast Guard reserves the right to select for CRADA participants all, some, or none of the proposals received in response to this notice. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals (or any other material) submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have no more than four single-sided pages (excluding cover page and resumes). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding of, and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described; and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering General Dynamics for participation in this CRADA. This consideration is based on General Dynamics': (1) Expertise, experience, and interest in asset tracking and non-verbal communications exchange technology; and (2) capability to provide the significant contributions required for the CRADA work. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

This is a technology transfer/development effort. Presently, the Coast Guard has no plan to acquire asset tracking and non-verbal communications exchange technology. Since the goal of this CRADA is to identify and investigate the advantages, disadvantages, performance, costs, and other issues associated with using asset tracking and non-verbal communications exchange technology, and not to set future Coast Guard acquisition requirements for such technology, non-Federal CRADA partners will not be excluded from any future Coast Guard procurements based solely on their participation within this CRADA.

Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S.

Authority

This notice is issued under the authority of 15 U.S.C. 3710(a), 5 U.S.C. 552(a), and 33 CFR 1.05–1.

Dated: March 19, 2012.

Alan N. Arsenault,

Captain, USCG, Commanding Officer, Research and Development Center.

[FR Doc. 2012–7788 Filed 3–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2006–26514]

Extension of Agency Information Collection Activity Under OMB Review: Rail Transportation Security

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0051, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on January 13, 2012, 77 FR 2077. The collection involves the submission of contact information of Rail Security Coordinators and alternate Rail Security Coordinators from freight railroad carriers; shippers and receivers of certain hazardous materials; and passenger railroad carriers, including each carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation and rail transit systems. Also, these persons are required to report significant security concerns, including security incidents, suspicious activity, and any threat information. In addition, freight railroad carriers and the affected shippers and receivers of hazardous materials are required to document the transfer of custody of certain hazardous materials and provide location and shipping information for certain rail cars.

DATES: Send your comments by May 2, 2012. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651; email *TSAPRA@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov*. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Rail Transportation Security.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0051.

Forms(s): N/A.

Affected Public: Rail.

Abstract: TSA will continue to collect information from regulated parties on

rail security coordinators and significant security concerns. TSA further requires freight rail carriers and certain facilities handling specified hazardous materials be able to report location and shipping information to TSA upon request; these regulated parties must also implement chain of custody and control requirements to ensure a positive and secure exchange of the specified hazardous materials listed in 49 CFR 1580.100(b), and make the reports available to TSA upon request.

Number of Respondents: 1,984.

Estimated Annual Burden Hours: An estimated 54,023 hours annually.

Issued in Arlington, Virginia, on March 23, 2012.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–7751 Filed 3–30–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Importers of Merchandise Subject to Actual Use Provisions

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30–Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Importers of Merchandise Subject to Actual Use Provisions. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 3785) on January 25, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before May 2, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1651–0032.

Form Number: None.

Abstract: In accordance with 19 CFR 10.137, importers of goods subject to the actual use provisions of the Harmonized Tariff Schedule of the United States (HTSUS) are required to maintain detailed records to establish that these goods were actually used as contemplated by the law and to support the importer's claim for a free or reduced rate of duty. The importer shall maintain records of use or disposition for a period of 3 years from the date of liquidation of the entry, and the records shall be available at all times for examination by CBP.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Time per Respondent: 65 minutes.

Estimated Total Annual Burden Hours: 13,000.

Dated: March 27, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–7813 Filed 3–30–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

[NPS–WASO–2410–0113–9304; 2410–OYC]

National Park Service Concessions Management Advisory Board Reestablishment

AGENCY: National Park Service, Interior.

ACTION: Notice of Renewal.

SUMMARY: The Secretary of the Interior is giving notice of renewal of the National Park Service Concessions Management Advisory Board. This action is necessary and in the public interest in connection with the performance of statutory duties imposed upon the Department of the Interior and the National Park Service.

FOR FURTHER INFORMATION CONTACT: Jo Pendry, Chief, Commercial Services Program on 202–513–7156.

SUPPLEMENTARY INFORMATION: The National Park Service Concessions Management Advisory Board was established by Title IV, Section 409 of Public Law 105–391, the National Parks Omnibus Management Act of 1998, November 13, 1998, with a termination date of December 31, 2008. Pursuant to Title VII, Subtitle A, Section 7403 of Public Law 111–11, the Omnibus Public Land Management Act of 2009, March 30, 2009, the Board was extended one year and terminated on December 31, 2009. On January 1, 2010, the Board was converted to a discretionary committee, provided that it is renewed every 2 years in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix).

The advice and recommendations provided by the Board and its subcommittees fulfill an important need within the Department of the Interior and the National Park Service, and it is necessary to administratively reestablish the Board to ensure its work is not

disrupted. The Board's seven members will be balanced to represent a cross-section of disciplines and expertise relevant to the National Park Service mission. The renewal of the Board comports with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix), and follows consultation with the General Services Administration. The administrative reestablishment will be effective on the date the charter is filed pursuant to section 9(c) of the Act and 41 CFR 102–3.70.

Certification: I hereby certify that the renewal of the National Park Service Concessions Management Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916, 16 U.S.C. 1 *et seq.,* and other statutes relating to the administration of the National Park System.

Dated: March 14, 2012.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2012–7856 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–ES–2012–N077; FXES111309WLLF0D2–123–FF09E30000]

Proposed Information Collection; Wolf Livestock Demonstration Project Grant Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by June 1, 2012.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or INFOCOL@fws.gov (email). Please include ''1018–New'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at INFOCOL@fws.gov (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

Subtitle C of Title VI of the Omnibus Public Land Management Act of 2009 (Act) (Pub. L. 111–11) authorizes the Secretary of the Interior and the Secretary of Agriculture to develop a Wolf Livestock Demonstration Project Grant Program (WLDPGP) to:

- Assist livestock producers in undertaking proactive, nonlethal activities to reduce the risk of livestock loss due to predation by wolves; and
- Compensate livestock producers for livestock losses due to such predation.

The Act directs that the program be established as a grant program to provide funding to States and tribes, that the Federal cost-share not exceed 50 percent, and that funds be expended equally between the two purposes. The Act included an authorization of appropriations up to $1 million each fiscal year for 5 years. For FY 2012, the U.S. Fish and Wildlife Service Endangered Species Program will allocate the funding as competitively awarded grants to States and tribes with a prior history of wolf depredation. States with delisted wolf populations are eligible for funding, provided that they meet the eligibility criteria contained in Public Law 111–11.

The following additional criteria apply to all WLDPGP grants and must be satisfied for a project to receive WLDPGP funding:

- A proposal cannot include U.S. Fish and Wildlife Service full-time equivalent (FTE) costs.
- A proposal cannot seek funding for projects that serve to satisfy regulatory requirements of the Endangered Species Act (ESA) including complying with a biological opinion under section 7 or fulfilling commitments of a Habitat Conservation Plan (HCP) under section 10, or for projects that serve to satisfy other Federal regulatory requirements (e.g., mitigation for Federal permits).
- State administrative costs must be assumed by the State or included in the proposal in accordance with Federal requirements.

We will publish notices of funding availability on the Grants.gov Web site at *http://www.grants.gov* as well as in the Catalog of Federal Domestic Assistance at *http://cfda.gov*. To compete for grant funds, eligible States and tribes must submit an application that describes in substantial detail project locations, project resources, future benefits, and other characteristics that meet the Wolf Livestock Demonstration Project purposes as listed above. In accordance with the Act, States and tribes that receive a grant must:

- Maintain files of all claims received under programs funded by the grant, including supporting documentation; and
- Submit an annual report that includes a summary of claims and expenditures under the program during the year and a description of any action taken on the claims.

Materials that describe the program and assist applicants in formulating project proposals will be available on our Web site at www.fws.gov/grants Persons who do not have access to the Internet may obtain instructional materials by mail.

II. Data

OMB Control Number: 1018–XXXX. This is a new collection.

Title: Wolf Livestock Demonstration Project Grant Program.

Service Form Number: None.

Type of Request: Request for a new OMB control number.

Description of Respondents: States and Indian tribes.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
Applications	22	22	8	176
Reports	20	20	4	80

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
Recordkeeping	20	20	10	200
TOTALS	62	62		456

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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: March 27, 2012.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2012–7837 Filed 3–30–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2011–N266; FXHC11220900000Z2–112–FF09F20000]

Proposed Information Collection; Land-Based Wind Energy Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This information collection is scheduled to expire on September 30, 2012. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by June 1, 2012.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *INFOCOL@fws.gov* (email). Please include ''1018–0148'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *INFOCOL@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

In January 2012, we requested that OMB approve, on an emergency basis, our request to collect information associated with the Land-Based Wind Energy Guidelines (Guidelines). We asked for emergency approval because of the potential negative effects that proposed wind energy facilities may have on wildlife and their habitat. OMB approved our request and assigned OMB Control No. 1018–0148, which expires September 30, 2012. We are going to ask OMB to extend the approval for this information collection for 3 years.

As wind energy production increased, both developers and wildlife agencies recognized the need for a system to evaluate and address the potential negative impacts of wind energy projects on species of concern. These voluntary Guidelines (*http://www.fws.gov/windenergy*) provide a structured, scientific process for addressing wildlife conservation concerns at all stages of land-based wind energy development. They also promote effective communication among wind energy developers and Federal, State, tribal, and local conservation agencies. When used in concert with appropriate regulatory tools, the Guidelines will be the best practical approach for conserving species of concern.

The Guidelines discuss various risks to ''species of concern'' from wind energy projects, including collisions with wind turbines and associated infrastructure; loss and degradation of habitat from turbines and infrastructure; fragmentation of large habitat blocks into smaller segments that may not support sensitive species; displacement and behavioral changes; and indirect effects such as increased predator populations or introduction of invasive plants. The Guidelines assist developers in identifying species of concern that may potentially be affected by proposed projects, including, but not limited to:

- Migratory birds;
- Bats;
- Bald and golden eagles and other birds of prey;
- Prairie and sage grouse; and
- Listed, proposed, or candidate endangered and threatened species.

The Guidelines follow a tiered approach. The wind energy developer begins at Tier 1 or Tier 2, which entails gathering of existing data to help identify any potential risks to wildlife and their habitats at proposed wind energy project sites. The developer then proceeds through subsequent tiers, as appropriate, to collect information in increasing detail until the level of risk is adequately ascertained and a decision on whether or not to develop the site can be made. Many projects may not proceed beyond Tiers 1 or 2, when developers become aware of potential barriers, including high risks to wildlife. Developers would only have an interest in adhering to the Guidelines for those projects that proceed beyond Tiers 1 and 2.

At each tier level, wind energy developers and operators should retain documentation to provide to the Service. Such documentation may include copies of correspondence with the Service, results of pre- and post-

construction studies conducted at project sites, bird and bat conservation strategies, or any other record that supports a developer's adherence to the Guidelines. The extent of the documentation will depend on the conditions of the site being developed. Sites with greater risk of impacts to wildlife and habitats will likely involve more extensive communication with the Service and longer durations of pre- and post-construction studies than sites with little risk.

Distributed or community-scale wind energy projects are unlikely to have significant adverse impacts to wildlife and their habitats. The Guidelines recommend that developers of these small-scale projects do the desktop analysis described in Tier 1 or Tier 2 using publicly available information to determine whether they should communicate with the Service. Since such project designs usually include a single turbine associated with existing development, conducting a Tier 1 or Tier 2 analysis for distributed or community-scale wind energy projects should incur limited nonhour burden costs. These analyses are conducted using readily available existing information, so the nature of these costs may include travel to project sites. For such projects, if there is no potential risk identified, a developer will have no need to communicate with the Service regarding the project or to conduct studies described in Tiers 3, 4, and 5.

Adherence to the Guidelines is voluntary. Following the Guidelines does not relieve any individual, company, or agency of the responsibility to comply with applicable laws and regulations. Developers of wind energy projects have a responsibility to comply with the law; for example, they must obtain incidental take authorization for species protected by the Endangered Species Act (ESA) and/or Bald and Golden Eagle Protection Act (BGEPA).

II. Data

OMB Control Number: 1018–0148.

Title: Land-Based Wind Energy Guidelines.

Service Form Number: None.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Developers and operators of wind energy facilities.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

ACTIVITY (reporting and recordkeeping)	NUMBER of respondents	NUMBER of responses	COMPLETION time per response	TOTAL annual burden hours	NONHOUR burden cost per response	TOTAL annual nonhour burden cost
Tier 1 (Desktop Analysis)	150	150	83	12,450	$2,000	$300,000
Tier 2 (Site Characterization)	110	110	375	41,250	$4,000	$440,000
Tier 3 (Pre-construction studies)	80	80	2,880	230,400	$23,000	$1,840,000
Tier 4 (Post-construction fatality monitoring and habitat studies)	50	50	2,550	127,500	$95,000	$4,750,000
Tier 5 (Other post-construction studies	10	10	2,400	24,000	$191,000	$1,910,000
TOTALS	400	400		435,600		$9,240,000

Estimated Annual Nonhour Burden Cost: $9,240,000. Costs will depend on the size and complexity of issues associated with each project. These expenses may include, but are not limited to: Travel expenses for site visits, studies conducted, and meetings with the Service and other Federal and State agencies; training in survey methodologies; data management; special transportation such as all-terrain vehicle or helicopter; equipment needed for acoustic, telemetry, or radar monitoring, and carcass storage.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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: March 26, 2012.

Tina A.Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2012–7840 Filed 3–30–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L12200000.AL 0000]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council (DAC) to the Bureau of Land Management (BLM), U.S. Department of the Interior, will meet in formal session on Saturday, April 21, 2012, from 8 a.m. to 4:30 p.m. in Ridgecrest, Calif. at a location to be noticed at least 15 days prior to the meeting. There also will be a field trip on Friday, April 20, from 8 a.m. to 4:30 p.m. on BLM-administered lands. Field trip details will be posted on the DAC web page, *http://www.blm.gov/ca/st/en/info/rac/dac.html,* when finalized.

Agenda topics for the Saturday meeting will include updates by council members, the BLM California Desert District manager, five field office managers, and council subgroups. Final agenda items will be posted on the DAC web page listed above.

SUPPLEMENTARY INFORMATION: All DAC meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the council chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8 a.m. to 4:30 p.m., the meeting could conclude prior to 4:30 p.m. should the council conclude its presentations and discussions. Therefore, members of the

public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs, (951) 697–5220.

Dated: March 19, 2012.

Raymond Lee,

Acting Associate District Manager, California Desert District.

[FR Doc. 2012–7785 Filed 3–30–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCRO–MONO–0811–7948; 3130–SZM]

Notice of a Record of Decision; Monocacy National Battlefield

AGENCY: National Park Service, Interior.

ACTION: Notice of a Record of Decision on the Final Environmental Impact Statement for the General Management Plan, Monocacy National Battlefield.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Record of Decision for the General Management Plan, Monocacy National Battlefield. Maryland. As soon as practicable, the NPS will begin to implement the preferred alternative as contained in the Final Environmental Impact Statement issued by the NPS on August 27, 2010, and summarized in the Record of Decision. Copies of the Record of Decision may be obtained from the contact listed below or online at *www.nps.gov/mono.*

FOR FURTHER INFORMATION CONTACT: David Hayes, National Park Service, 1100 Ohio Drive SW, Washington, DC 20242, (202) 619–7277, *DavidHayes@nps.gov.*

SUPPLEMENTARY INFORMATION: The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm and an overview of public involvement in the decision-making process.

Alternative 4 is the Selected Alternative. The following course of action will occur under Alternative 4:

All historic structures will be preserved and maintained, and the historic farmlands will continue to be leased to retain their use in agriculture. The outbuildings on the Best Farm will remain open. The Worthington House will be rehabilitated inside and be open to visitors with exhibits.

Monocacy National Battlefield administration will be moved into the rehabilitated Thomas House. The stone tenant house on the Thomas farm will contain exhibits and restrooms. Monocacy National Battlefield maintenance will continue to operate from its current location in a nonhistoric structure near the Gambrill Mill and be redesigned to meet the needs for office, vehicle storage, and work space.

Three nonhistoric structures will be removed from the landscape—two structures are houses constructed of cinderblocks, and the third is a historic toll house that was moved to the site from its original location. It is in severely deteriorated condition and lacks integrity, and its proximity to the intersection of Araby Church Road and Maryland Highway 355 (MD–355) makes it a safety concern.

The entrance to the 14th New Jersey Monument will be shifted south to allow better sight distances entering and exiting MD–355. An existing informal parking area on the east side of MD–355 used by fishermen will be closed and the area relandscaped. River access will continue from the 14th New Jersey Monument parking area. A landscaped commemorative area will be created at the site of the Pennsylvania and Vermont Monuments as a location for any new memorials that may be added to the Monocacy National Battlefield in the future.

Visitors will use their own vehicles to drive around the Monocacy National Battlefield using existing roadways (Baker Valley Road, Araby Church Road, and MD–355). The possibility of a pedestrian deck spanning Interstate 270 (I–270) is being evaluated in consultation with the Maryland Department of Transportation (MDOT) as mitigation for MDOT widening of I–270 through the Monocacy National Battlefield. If the deck proves feasible and if an agreement can be worked out, it will provide a trail spanning I–270 that connects the Worthington and Thomas farms.

A new trail extension of the Gambrill Mill Trail will enable visitors to walk to the railroad junction and on to the sites of the Union entrenchments and Wallace's headquarters, all important interpretive locations within the Monocacy National Battlefield. Upgraded interpretation using new signs, wayside markers and brochures will be developed. Natural resource areas along rivers and drainages and along the heights behind the Worthington farmhouse will remain undeveloped and protected.

This course of action and three alternatives were analyzed in the Draft and Final Environmental Impact Statements. Three actions were key in the decision to make Alternative 4 the selected alternative.

First, moving the maintenance and administrative functions from the park into rental space in nearby Frederick, as would have occurred in Alternative 2, would have allowed the removal of the existing metal maintenance structure from the battlefield landscape and the commercial leasing of the Thomas House. However, this would have increased the amount of driving by park staff on busy MD–355 and would have unduly separated park staff from the resources managed and interpreted. It would also have placed a commercial use within the heart of the national battlefield (the lease of the Thomas House).

Second, an alternative transportation system in Alternative 2 would have decreased visitor driving within the park, made visitor access to park areas safer by obviating the use of busy MD–355, and decreased the size of parking areas at each site. This system weighed heavily in the selection of Alternative 2 as the environmentally preferable alternative. However, current visitation does not make such a system financially feasible as a commercial operation and there is no guarantee that such a system would be financially feasible in the future. Both Alternatives 3 and 4 utilize personal vehicles to access the park.

Third, Alternatives 2 and 4 include a connection of the Thomas and Worthington farms via a deck over I–270, while Alternative 3 does not. A connection of the two farms is an important interpretive tool allowing visitors and park staff to easily move back and forth between the two properties.

As a result Alternative 4 was selected to better connect park staff to the resource, (2) to more fully consider the financial feasibility of alternative transportation at this time, and (3) to

ensure the connection of the Thomas and Worthington farms both physically and interpretively.

The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Regional Director, National Capital Region approved the Record of Decision for the project on November 16, 2010. The official primarily responsible for implementing the General Management Plan is the Superintendent of Monocacy National Battlefield.

Dated: July 22, 2011.

Stephen E. Whitesell,

Regional Director, National Capital Region.

[FR Doc. 2012–7719 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–57–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, Walla Walla, WA, and Alfred W. Bowers Laboratory of Anthropology, University of Idaho, Moscow, ID

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Defense, Army Corps of Engineers, Walla Walla District, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribe, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District. Repatriation of the human remains and associated funerary objects to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, at the address below by May 2, 2012.

ADDRESSES: LTC David Caldwell, U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, 201 North Third Ave., Walla Walla, WA 99362, telephone (509) 527–7700.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District (Corps), Walla Walla, WA, and in the physical custody of the Alfred W. Bowers Laboratory of Anthropology, University of Idaho (UI), Moscow, ID. The human remains and associated funerary objects were removed from Clearwater and Nez Perce Counties, ID.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by U.S. Department of Defense, Army Corps of Engineers and University of Idaho professional staffs in consultation with representatives of the Nez Perce Tribe, Idaho.

History and Description of the Remains

In 1963, human remains representing, at minimum, three individuals were removed from site 10CW1, an open fishing camp located on the east side of the North Fork of the Clearwater River at Bruce's Eddy, in Clearwater County, ID. Site 10CW1 is located within the Dworshak Dam and Reservoir Project on the Clearwater River. The Dworshak Dam and Reservoir Project is managed by the Corps, who initiated the land acquisition processes for the Project in 1963. Idaho State College surveyed site 10CW1 in 1961, but did not collect anything. In 1963, the same institution, which had been renamed the Idaho State University (ISU), returned to the site for excavation, at which time three burials were discovered on the hills flanking the north end of the site. Burials 1 and 2 were marked by a semi-circle of rocks measuring approximately 12 feet in diameter and contained human remains and a large amount of copper funerary objects. Burial 3 was disturbed and contained human remains without funerary objects. The human remains and associated funerary objects were removed and transferred to the ISU Museum. In 1976, the collection was transferred to UI for study and analysis (UI accession number 76–2).

The human remains from Burial 1 include an adult female around 40 years old, placed on its left side in a loosely flexed position with the head positioned to the northwest, found with associated funerary objects. The human remains from Burial 2 include the remains of an infant under 1 year old, placed with its head oriented to the west and found with associated funerary objects. The human remains from Burial 3 were of an adolescent of indeterminate age or gender and did not contain associated funerary objects. No known individuals were identified. The 586 associated funerary objects are: 44 copper tubular beads; 1 antler digging stick handle; 222 copper tubular beads with cordage; 1 bracelet fragment; 16 copper bracelet fragments; 2 seed husks; 193 glass beads; 1 lot red ochre; 6 copper pendants; 7 copper tubular beads with cordage and dentalium; 9 copper bead fragments; 15 copper tubular beads with cordage, hair, fur, leather, and dentalia; 7 copper tubular bead pieces with cordage, hair, fur, cloth, and dentalia; 4 dentalium shell; 3 copper pendants with tubular beads and cordage; 1 chert flake; 9 copper tubular beads with cordage and cut dentalium shell; 8 copper tubular beads with cordage and cut dentalium; 3 copper tubular beads with cordage and dentalium; 20 pieces mixture of soil, cord, beads, hair, fur, and copper; 12 copper tubular beads strung with a leather thong; 1 metal fragment; and 1 pestle.

Burials 1 and 2 from site 10CW1 may date to the protohistoric period due to the presence of copper, glass and cloth. Based on an analysis of the copper objects, the burials likely date to A.D. 1780–1810. Burial 3 may date to the prehistoric period based on the lack of funerary objects. The human remains have been examined by a physical anthropologist. One individual was noted to exhibit signs of fronto-occipital deformation, a common trait found in Native American remains. The archeological assemblage from site 10CW1 indicates that it was continually occupied from the Tucannon Phase (B.C. 5000–3000) to the historic period. The site is located at the traditional Nez Perce salmon fishing weir called *ti mi:mara wispayka:s.* A petroglyph consisting of three parallel lines on a basalt boulder at the waters' edge verifies this location as a Nez Perce fishing site, as these ''lines served as guides to the construction of the fish trap.'' According to Henry Wheeler, a Nez Perce informant consulted during the 1961 investigation at the site,

multiple Nez Perce bands used this site during the salmon fishing season, including the *Atskaaiwawipu,* the *Tewepu,* the *Hasotino,* the *Nipihama,* the *Alpowamino* and the *Matalaimo.* Additionally, this site is located within the judicially established land area of the Nez Perce Tribe, Idaho.

In 1964, human remains representing, at minimum, two individuals were removed from site 10NP1, an open village site located on the east side of the Snake River near Captain John Creek, in Nez Perce County, ID. Site 10NP1 is located on lands that were to be inundated for the Asotin Dam Reservoir, which was never constructed. While the site is not on Corps property, the Corps has taken responsibility for human remains collected at the site. A Washington State University (WSU) team surveyed and excavated site 10NP1 in 1964, in two test pits. Test Pit 2 contained a single cairn burial with the human remains of two individuals (Burial 1a and 1b). The human remains were removed and transported to WSU, and were transferred to UI in 2000. No known individuals were identified. No associated funerary objects are present in the collection.

According to the 1969 survey report, the Burials 1a and 1b were typical of the late prehistoric period. The burials contained the partial skeletal remains of an adult male and an adult female, both arranged in flexed positions. Each individual was wrapped in tule matting, lay on an east-west axis and faced west toward the Snake River. According to the report, a subsurface cairn containing a hopper mortar had been constructed directly above the burial. In addition, a tubular steatite pipe and three bone awls reportedly were recovered in direct association with the human remains. The location of these artifacts is unknown. The site is in the zone of exploitation of the Nez Perce village of *?ilaqatpá?tpo.*

In 1964, human remains representing, at minimum, two individual were removed from site 10NP27, a burial site located on the east side of the Snake River near Buffalo Draw, in Nez Perce County, ID, near the Nez Perce village area of *hetéwisnime.* Site 10NP27 is located on lands that were to be inundated for the Asotin Dam Reservoir, which was never constructed. While the site is not on Corps property, the Corps has taken responsibility for human remains collected at the site. The site was discovered during an archeological survey and test excavation of the Asotin Dam Reservoir area by a WSU team led by Charles M. Nelson and David G. Rice. The WSU team excavated two test pits in 1964. Test Pit 1 proved to be a false cairn created by the potting of a nearby burial. Test Pit 2 uncovered a single burial. The burial was situated in a flexed position, and oriented in an east-west direction, with the skull facing east, away from the Snake River. Fragments of steatite pipe were found scattered near the individual. The human remains were removed and transported to WSU, and were transferred to UI in 2000. No known individuals were identified. No associated funerary objects are present.

Five lines of evidence—geographical, biological, archeological, anthropological and historical—support a cultural affiliation between the Nez Perce Tribe, Idaho, and the human remains identified in all of the sites above.

Determinations Made by the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District

Officials of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of seven individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 586 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Nez Perce Tribe, Idaho.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact LTC David Caldwell, U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, 201 North Third Ave., Walla Walla, WA 99362, telephone (509) 527–7700, before May 2, 2012. Repatriation of the human remains and associated funerary objects to the Nez Perce Tribe, Idaho, may proceed after that date if no additional claimants come forward.

The U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, is responsible for notifying the Nez Perce Tribe, Idaho, that this notice has been published.

Dated: March 28, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–7881 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The California Department of Parks and Recreation has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the California Department of Parks and Recreation. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the California Department of Parks and Recreation at the address below by May 2, 2012.

ADDRESSES: Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, Sacramento, CA 95814, telephone (916) 653–8893.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the California Department of Parks and Recreation. The human remains and associated funerary objects were removed from ten sites located in northeastern San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal

agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the California Department of Parks and Recreation professional staff in consultation with representatives of the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of Cahuilla Indians, California (formerly the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation); Cabazon Band of Mission Indians, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of Cahuilla and Cupeno Indians, California (formerly the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation); Morongo Band of Mission Indians, California (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation); Ramona Band of Cahuilla, California (formerly the Ramona Band or Village of Cahuilla Mission Indians of California); Santa Rosa Band of Cahuilla Indians, California (formerly the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation); and Torres-Martinez Desert Cahuilla Indians, California (formerly the Torres-Martinez Band of Cahuilla Mission Indians of California) (hereafter referred to as ''The Tribes'').

History and Description of the Remains

The human remains and associated funerary objects listed in this notice were removed from ten sites located in northeastern San Diego County, CA. The geographical location of these ten sites indicates the human remains were recovered within the historically documented territory of the Cahuilla. The traditional aboriginal territory of the Cahuilla, as defined by anthropologist Lowell John Bean, encompasses a geographically diverse area of mountains, valleys and low desert zones. The southernmost boundary approximately followed a line from just below Borrego Springs to the north end of the Salton Basin and the Chocolate Mountains. The eastern boundary ran along the summit of the San Bernardino Mountains. The northern boundary stood within the San Jacinto Plain near Riverside, while the base of Palomar Mountain formed the western boundary. According to Bean and archeologist William D. Strong, the northern end of Anza Borrego Desert State Park lies within the traditional territory of the Cahuilla and includes the areas of Borrego Palm Canyon, Coyote Canyon, Clark Valley, the Santa Rosa Mountains, Jackass Flat, Rockhouse Canyon and Horse Canyon.

In April of 1972, human remains representing, at minimum, two individuals were removed from site CA–SDI–343 (Santa Caterina/Lower Willows) in the Coyote Canyon area of Anza Borrego Desert State Park by Professor Paul Ezell and archeology students from San Diego State University. No known individuals were identified. No associated funerary objects are present. The age of the human remains is unknown.

At an unknown date in the 1970s, a cremated human bone representing, at minimum, one individual was removed from site CA–SDI–489 (Ocotillo Flats) in the Coyote Canyon area of Anza Borrego Desert State Park by archeologist William Seidel during a survey of the area. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown.

At an unknown date in the 1970s, a cremated human bone representing, at minimum, one individual was removed from site CA–SDI–1116 in the Coyote Canyon area of Anza Borrego Desert State Park by archeologist William Seidel during a survey of the area. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown.

In 1955, human remains representing, at minimum, three individuals were removed from site CA–SDI–1465 (Hidden Springs) in the Borrego Palm Canyon and Jackass Flats areas of Anza Borrego Desert State Park. No known individuals were identified. The 40 associated funerary objects are 1 quartzite flake; 8 potsherds of undetermined ware; 6 buffware potsherds; 11 potsherds in pieces; 1 flake of obsidian shatter; 1 obsidian finishing/resharpening flake (source determined to be Obsidian Butte); 2 obsidian finishing/resharpening flakes; 1 quartz flake; 1 charred *Agavaceae* seed; 1 green fused shale biface tip; 1 burnt wonderstone flake; 2 burned worked faunal bone fragments; l lot of faunal bone fragments; 1 lot of unidentified faunal bone fragments; 1 burnt *Olivella dama* shell bead; and 1 burnt shell disk bead (possibly an *Olivella* callus or clam shell disk bead). The age of the human remains and associated funerary objects is unknown.

At an unknown date in the 1970s, human cranial bone fragments representing, at minimum, one individual were removed from site CA–SDI–2366 (Carlburg) located near Clark Dry Lake in Anza Borrego Desert State Park by archeologist William Seidel. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown.

At an unknown date in the 1990s, a cremated human bone representing, at minimum, one individual was removed from the surface of site CA–SDI–16494 (Horse Camp) in the Coyote Canyon area of Anza Borrego Desert State Park by California State Parks Archaeologist Rae Schwaderer. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown.

At an unknown date in the 1970s, human bone fragments representing, at minimum, two individuals were removed from an unidentified site located south of the elementary school in Borrego Springs, CA by archeologist William Seidel. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown.

At an unknown date in the late 1950s or early 1960s, a human bone representing, at minimum, one individual was removed from an unidentified site described as a ''sand dune in Clark Dry Lake'' approximately seven miles northeast of Borrego Springs, CA, by archeologist William Wallace. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown.

On March 5, 1955, human bones representing, at minimum, two individuals were removed from an unidentified site described as a ''sand dune in Clark Dry Lake'' in Anza Borrego Desert State Park by Ben McCown. No known individual was identified. The 181 associated funerary objects are 1 lot of burnt shell beads; 1 granite mano fragment; 2 fragments of obsidian shatter; 4 wonderstone flakes; 1 wonderstone cottonwood triangular projectile point; 3 faunal bones; 1 lot of burnt faunal bone; and 168 potsherds. The age of the human remains is unknown; however, the cottonwood triangular projectile suggests a date for both the remains and associated funerary objects in the ''Late Period.''

In 1975 and 1978, human remains representing, at minimum, one individual were removed from site CA–SD–98 in the Borrego Palm Canyon area of Anza Borrego Desert State Park by archeologist William Seidel. No known individual was identified. The 33 associated funerary objects are 2 lots of faunal bones; 8 soil samples; 1 lot of

Olivella biplicata rough disk shell beads; 2 lots of various shell fragments; 3 ceramic pipe fragments; 1 polished bone fragment; 1 rusted square nail; 2 rusted iron fragments; 1 sample of organic matter; 5 projectile points or fragmentary projectile points; 1 lot of obsidian flakes; 1 lot of wonderstone flakes; 1 lot of quartz flakes; 1 lot of quartzite flakes; 1 lot of sherds representing a painted pottery scoop of Tumco Buffware; 1 lot of sherds of pottery with an undetermined ware; and 1 lot of Brownware pottery sherds.

The human remains and associated funerary objects listed above were stored at facilities within the Colorado Desert District of the California Department of Parks and Recreation until an inventory effort was begun in 2004. Since then, the remains have been stored at the Bigole Archaeological Research Center (BARC–2) in Borrego Springs, CA.

Determinations made by the California Department of Parks and Recreation

Officials of the California Department of Parks and Recreation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of fifteen individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 254 associated funerary objects are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, telephone (916) 653–8893, before May 2, 2012. Repatriation of the human remains to The Tribes may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying The Tribes that this notice has been published.

Dated: March 28, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–7890 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The California Department of Parks and Recreation has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the California Department of Parks and Recreation. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human should contact the California Department of Parks and Recreation at the address below by May 2, 2012.

ADDRESSES: Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, Sacramento, CA 95814, telephone (916) 653–8893.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the California Department of Parks and Recreation. The human remains were removed from three sites located in San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the California Department of Parks and Recreation professional staff in consultation with representatives of the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of Cahuilla Indians, California (formerly the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation); Cabazon Band of Mission Indians, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California: Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California, and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation); Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Los Coyotes Band of Cahuilla and Cupeno Indians, California (formerly the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation); Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; Morongo Band of Mission Indians, California (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation); Ramona Band of Cahuilla, California (formerly the Ramona Band or Village of Cahuilla Mission Indians of California); San Pasqual Band of Diegueno Mission Indians of California; Santa Rosa Band of Cahuilla Indians, California (formerly the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation); Sycuan Band of the Kumeyaay Nation; and Torres-Martinez Desert Cahuilla Indians, California (formerly the Torres-Martinez Band of Cahuilla Mission Indians of California) (hereafter referred to as ''The Tribes'').

History and Description of the Remains

The human remains were removed from three sites located in San Diego County, CA. The geographical location of these sites indicates that the human remains were recovered within the historically documented territory shared by the Cahuilla and the Kumeyaay. Northern areas of the Anza Borrego

Desert State Park, such as the San Felipe Creek drainage, Culp Valley, Pinyon Ridge, the Borrego Badlands, and the Borrego Valley, may have formed a so-called ''transitional zone'' between the Cahuilla and the Kumeyaay. The two groups would have used the areas jointly or, as convenient, for subsistence or ceremonial needs.

The traditional territory of the Kumeyaay includes a significant portion of present-day San Diego County up to the Aqua Hedionda area and inland along the San Felipe Creek (just south of Borrego Springs). Bound to the east by the Sand Hills in Imperial County and includes the southern end of the Salton Basin and all of the Chocolate Mountains, the territory extends southward to Todos Santos Bay, Laguna Salada and along the New River in northern Baja California. The central and southern portions of Anza Borrego Desert State Park lie within the traditional territory of the Kumeyaay.

The traditional aboriginal territory of the Cahuilla, as defined by anthropologist Lowell John Bean, encompasses a geographically diverse area of mountains, valleys and low desert zones. The southernmost boundary approximately followed a line from just below Borrego Springs to the north end of the Salton Basin and the Chocolate Mountains. The eastern boundary ran along the summit of the San Bernardino Mountains. The northern boundary stood within the San Jacinto Plain near Riverside, while the base of Palomar Mountain formed the western boundary. According to Bean and archeologist William D. Strong, the northern end of Anza Borrego Desert State Park lies within the traditional territory of the Cahuilla and includes the areas of Borrego Palm Canyon, Coyote Canyon, Clark Valley, the Santa Rosa Mountains, Jackass Flat, Rockhouse Canyon and Horse Canyon.

At an unknown date in the 1930s, a human incisor representing, at minimum, one individual was collected by Harry D. Ross from an unidentified site and added to the Harry D. Ross Collection. The Harry D. Ross collection, consisting primarily of flaked tools collected from Lower Borrego, Cuyamaca and Harper Flat, were later donated to the Bigole Archaeological Research Center in Borrego Springs, CA. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown. Given the lack of specific provenience, the geographical location of the site is impossible to determine. Based on the provenience of other objects in the Harry D. Ross Collection, it can be reasonably assumed that these remains were collected from the same geographic region as other objects in the collection.

At an unknown date in the 1970s, cremated human remains representing, at minimum, one individual were collected by archeologist William Seidel from an unidentified site northwest of the Borrego Sink in Borrego Springs, CA. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown.

At an unknown date prior to 1977, human remains representing, at minimum, one individual were removed by an unidentified individual from an unidentified site in the Anza Borrego Desert State Park and were donated to California State Parks by Lloyd T. Findley in 1977. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown.

At an unknown date prior to 1976, cremated human remains representing, at minimum, one individual were removed by an unidentified individual from an unidentified site in the Anza Borrego Desert State Park in San Diego County, CA, and were donated anonymously to California State Parks in 1976. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown.

At an unknown date prior to the 1970s, cremated human remains representing, at minimum, one individual were removed by an unidentified individual from an unidentified site in the Borrego Valley area of Anza Borrego Desert State Park. The cremated human remains were included in the DuVall Collection, which was later donated to California Department of Parks and Recreation in the 1970s. The DuVall Collection represents cultural materials collected on and around an early settlers' ranch in Borrego Valley. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown. Given the lack of specific provenience, the geographical location of the site is impossible to determine. Based on the provenience of the other objects from the DuVall Ranch in Borrego Valley, it can be reasonably assumed that these remains were collected from the same geographic region.

The human remains listed above were stored at facilities within the Colorado Desert District of the California Department of Parks and Recreation until an inventory effort was begun in 2004. Since then, the remains have been stored at the Bigole Archaeological Research Center (BARC–2) in Borrego Springs, CA.

Determinations made by the California Department of Parks and Recreation

Officials of the California Department of Parks and Recreation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, telephone (916) 653–8893, before May 2, 2012. Repatriation of the human remains to The Tribes may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying The Tribes that this notice has been published.

Dated: March 28, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–7875 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The California Department of Parks and Recreation has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the California Department of Parks and Recreation. Repatriation of the human remains to the Indian tribes

stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human should contact the California Department of Parks and Recreation at the address below by May 2, 2012.

ADDRESSES: Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, Sacramento, CA 95814, telephone (916) 653–8893.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the California Department of Parks and Recreation. The human remains were removed from three sites located in San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the California Department of Parks and Recreation professional staff in consultation with representatives of the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California: Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California, and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation); Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; and the Sycuan Band of the Kumeyaay Nation (hereafter referred to as ''The Tribes'').

History and description of the remains

The human remains were removed from three sites located in San Diego County, CA. The geographical location of these three sites indicates that the human remains were recovered within the historically documented territory of the Kumeyaay. The traditional territory of the Kumeyaay includes a significant portion of present-day San Diego County up to the Aqua Hedionda area and inland along the San Felipe Creek (just south of Borrego Springs). Bound to the east by the Sand Hills in Imperial County and includes the southern end of the Salton Basin and all of the Chocolate Mountains, the territory extends southward to Todos Santos Bay, Laguna Salada and along the New River in northern Baja California. The central and southern portions of Anza Borrego Desert State Park lie within the traditional territory of the Kumeyaay.

In 1975, human remains representing, at minimum, one individual were removed from site CA–SDI–4010 (McCallister) in San Diego County, CA, by the Archaeological Survey Association. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown.

At an unknown date prior to 1977, cremated human remains representing, at minimum, one individual were removed from an unidentified site within the Mason Valley area of Anza Borrego Desert State Park. The human remains were donated by Lloyd T. Findley to the Colorado Desert District of the California Department of Parks and Recreation in 1977. No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown.

At an unknown date, cremated human remains representing, at minimum, one individual were removed from an unidentified site in Ocotillo, CA. The human remains were collected by Chester Qualey who reported the remains as being ''strewn across desert from cremation vessel in disturbed area.'' No known individual was identified. No associated funerary objects are present. The age of the human remains is unknown.

The human remains listed above were stored at facilities within the Colorado Desert District of the California Department of Parks and Recreation until an inventory effort was begun in 2004. Since then, the remains have been stored at the Bigole Archaeological Research Center (BARC–2) in Borrego Springs, CA.

Determinations made by the California Department of Parks and Recreation

Officials of the California Department of Parks and Recreation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, telephone (916) 653–8893, before May 2, 2012. Repatriation of the human remains to The Tribes may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying The Tribes that this notice has been published.

Dated: March 28, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–7891 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Sam Noble Oklahoma Museum of Natural History, Norman, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Sam Noble Oklahoma Museum of Natural History has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Sam Noble Oklahoma Museum of Natural History. Repatriation of the human remains and associated funerary objects

to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the museum at the address below by May 2, 2012.

ADDRESSES: Dr. Michael Mares, Sam Noble Oklahoma Museum of Natural History, 2401 Chautauqua, Norman, OK 73072, telephone (405) 325–8978.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Sam Noble Oklahoma Museum of Natural History, Norman, OK. The human remains and associated funerary objects were removed from Le Flore County, OK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Sam Noble Oklahoma Museum of Natural History professional staff in consultation with the Oklahoma State Archeologist and representatives of the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma. Representatives of the Osage Nation, Oklahoma, (formerly the Osage Tribe) and the Tunica-Biloxi Indian Tribe of Louisiana were also contacted, but did not express an interest in being a part of the NAGPRA consultation.

History and Description of the Remains

From 1936 to 1937, human remains representing, at minimum, 544 individuals were removed from the Craig Mound, in Le Flore County, OK. The mound site was excavated by the Works Progress Administration (WPA), under the direction of the University of Oklahoma. Excavated items were brought to the University of Oklahoma laboratory for processing and cataloging. The human remains were deposited at the University of Oklahoma, whose collections were subsequently controlled and maintained by the Sam Noble Oklahoma Museum of Natural History. No known individuals were identified.

Many of the associated funerary objects were divided between the WPA project's funding institutions. The Sam Noble Oklahoma Museum of Natural History has 78,485 associated funerary objects, comprised of: 963 points, 92 knives/knife fragments, 16 drills/perforator fragments, 4 flake tools, 9 flakes, 3 hammerstones, 2 manos/fragments, 36 blade fragments, 16 celt fragments, 5 mace fragments, 7 spud fragments, 1 monolithic ax handle, 1 boatstone, 4 groundstone fragments, 168 earspools/fragments, 14 ear discs, 8 rings for earspools/ear discs, 1 iron pyrite mass (ear plug?), 64 pendants/fragments, 21 pipes/fragments, 58 pottery vessels, 6,018 pottery sherds, 1 unidentified ceramic object, 43 baked clay/daub, 3,806 shell fragments (56 worked), 692 shells (engraved, including gorget and cup fragments), 1 spoon, 1 shell figurine, 63,892 beads, 17 bone awls, 1 bone digging stick fragment, 1 bird effigy (bone), 479 animal bone fragments (16 polished/worked), 290 copper fragments/samples, 1 copper maskette, 6 copper pins/fragments, 2 copper plates, 4 copper discs, 206 pigment samples, 31 clay samples, 3 ash samples, 1 seed, 6 soil samples, 1 litter post impression (soil matrix), 131 material samples (textile/organic/matting/basketry/cordage), 1 fused mass of cremation and green froth, 2 froth fragments, 9 clinkers/slag, 3 matting impressions, 8 human hair samples, 10 leather/hide samples, 35 charcoal samples, 65 wood samples, 5 cedar poles, 2 wood effigy head/faces, 1 wood mask, 1 wood stick with red pigment, 1 hematite discoid, 1 polishing stone, 55 galena, 3 hematite, 1 limestone, 1 mastodon tooth fragment, 1 fossil, 20 mica, 7 quartz, and 1,126 non-cultural rocks.

The burial lots from Craig Mound (site 34Lf40) contain sizeable quantities of funerary offerings and relics associated with religious practices of the Spiro phase (A.D. 1350–1450) people. These items are clearly of prehistoric manufacture and point to the preponderance of burials at Craig Mound being of prehistoric Native American origin. Cultural affiliation and designated tribal consultations have been derived through the archeological record, ethnohistoric and ethnographic data on Native American territories and homelands as documented by Europeans at the time of initial contact, and through tribal oral histories.

There are no lineal descendants for the prehistoric inhabitants of Craig Mound. Ceremonial use of the site was abandoned by circa A.D. 1450. The area surrounding this site continued to be occupied by Spiro descendents and, intermittently, by other native immigrants into the seventeenth century. By the time of European exploration in this area (the eighteenth century), there were no residents at the Craig Mound site, although various groups (e.g., Caddo, Osage and Wichita) were living nearby. Thus, establishing the cultural affiliation for the residents of Craig Mound must be derived from the archeological record, tribal oral histories and logical inference.

Since the 1950s, the term ''Caddoan'' has been used by archeologists to refer to the cultural tradition associated with the Spiro phase people and mound building groups in eastern Oklahoma. In other words, this term refers to a distinct set of material culture attributes, rather than the Caddoan language family. South of the Ouachita Mountains in Oklahoma, the term ''Caddo'' is more widely embraced due to historic continuity and direct lineal relationship between the archeological record and historic European encounters with the Caddo. North of the Ouachita Mountains, especially in the Arkansas River Basin, no such continuity exists, and the term ''Caddoan'' remains more applicable.

The origins of the Spiro culture are linked archeologically to the preceding inhabitants of the area (Fourche Maline), based on material culture and Coles Creek ceramics from the lower Arkansas River valley in early grave lots at the Craig Mound site. Exotic goods and relics were transported to the site throughout the ceremonial center's period of use (circa A.D. 850–1450). While their presence reflects interaction between the inhabitants of Craig Mound and groups from other regions, they do not prove a direct cultural affiliation of any of these groups with these sites. Thus, the Spiro or other Arkansas River Basin individuals buried at Craig Mound are considered local, and are not culturally affiliated with more distant groups.

Similarities exist in the ceremonial practices of groups occupying the Arkansas River and Red River drainages. However, there are also significant distinctions as well. Arkansas River drainage ceremonial sites, including Craig Mound, tend to have more formalized layouts around a distinct plaza area, which is absent for Caddo sites south of the Ouachita Mountains in Oklahoma. Although the Caddo did practice mound-building, the practice of accretional interment of deceased individuals on common floors in

multiple-lobed burial mounds in the Arkansas River drainage system (like at Craig Mound) is absent in the Red River drainage. In the Red River drainage (occupied by Caddo people), burials in mounds were commonly in shaft tombs dug into these mounds. Other cultural practices present in the Arkansas River drainage are also absent in the temporally subsequent Red River sites (such as a unique form of fronto-occipital cranial deformation, and the use of T-shaped platform pipes). These distinctions have resulted in archeologists acknowledging that the Arkansas and Red River groups may share material expressions of a common political/religious practice, but that they cannot be seen as necessarily representing groups that are directly related to one another.

Historically identified tribes that have been archeologically documented as present prior to and at historic contact (or somewhat later) in eastern Oklahoma include the Caddo and the Wichita. Mound building groups of the prehistoric and historic Caddo occupied southwest Arkansas, northeast and east Texas, northwest Louisiana and southeast Oklahoma. Villages thought to be part of the Kadohadacho confederacy were encountered by Hernando de Soto in the vicinity of Hot Springs in 1541. There are also numerous encounters by the French and Spanish with various groups of the Kadohadacho, Natchitoches, and Hasinai confederacies from the sixteenth to the eighteenth centuries in the region. While there appears to be a direct link between the late prehistoric village and mound sites south of the Ouachita Mountains in southeast Oklahoma and the Caddo, there are no early historically documented Caddo villages in southeast Oklahoma. Despite the presence of ceramics from the Red River interred with burials at Craig Mound, there is no historical evidence to support the presence of the Caddo north of the Ouachita Mountains in eastern Oklahoma.

Oral histories of the Caddo and Wichita contain numerous myths and legends with symbolic referents that also are found in the iconographic imagery at the Craig Mound site. However, this imagery is expansive throughout many late prehistoric eastern U.S. cultures and, thus, cannot be exclusively tied to the Craig Mound site. There are also no specific legends or myths from either tribe that can be directly related to the sites in the Arkansas River valley.

The Wichita is a general term used to refer to a number of societies encountered by the Spanish and, later, the French in Kansas and Oklahoma. By historic times, the Wichita were semi-nomadic bison hunters/farmers who did not practice mound building. Various groups of the Wichita met with the Frenchman, Bernard de La Harpe, in 1719, somewhere north of the Arkansas River. The 1937 Indian and Pioneer history map drafted by Tom Meagher depicts a number of historic Tawakonie villages in the Three Forks area near Muskogee, Oklahoma (some 55 miles west of the Craig Mound site). The Tawakonie represent one of the Wichita subgroups, thus giving some credence to the historic presence of the Wichita in the eastern Arkansas River basin. It has been proposed that the Fort Coffee phase (circa A. D. 1450–1660) represents the presence of the Kichai in eastern Oklahoma in the sixteenth-seventeenth centuries. They may represent a Plains Village society that moved east to escape prolonged droughts in south-central Oklahoma. From the archeological data, it appears that the Kichai became integrated with Spiro phase people. However, the Kichai moved from the area and by the eighteenth century were found on the Red River, upstream from known Caddo settlements. The Kichai were socially tied to the Wichita tribe during historic times, and were formally included with the Wichita through a treaty agreement with the U.S. Government in 1835.

Arkansas researchers suggest that the ''Tula'' encountered by Hernando de Soto in 1541, somewhere between Ozark and Fort Smith in the Arkansas River Valley, were remnants of the Fort Coffee phase. One problem with this model is that the Tula encountered by DeSoto practiced an extreme form of cranial modification similar to that noted on some Spiro individuals. By contrast, to date, no Fort Coffee phase remains have been found that exhibit this modification. As the ties between the historically identified Kichai of northeast Texas and the Fort Coffee phase are material culture-based, there is not a direct cultural affiliation that can be further qualified by historic documentation or tribal histories. However, it is clear that a Wichita and Kichai presence in eastern Oklahoma may extend back into prehistoric time.

DNA and craniometrical data have been used to derive some degree of biological relationship between prehistoric populations and known historic tribes. Regrettably, no such data exists for Craig Mound. There is a general acknowledgement that there is some commonality among late prehistoric Caddoan and Plains Village populations on the Southern Great Plains and that these may relate to known groups such as the Caddo and Wichita. Further refinement to establish a biological relationship between the Craig Mound and historically identified tribes would require extensive sampling and measurement of the Spiro phase skeletal population, as well as comparative data for other prehistoric and historic populations.

Archeologically, the material culture and practice of the Craig Mound residents resembles some of those of the Caddo, but there are also distinct differences. Historically, the Wichita/Kichai appear to have resided in the Arkansas River valley in the area of Craig Mound at the time of internment, although there is no direct evidence to support this (archeologically or historically). This evidence, when paired with the extensive literature referring to these residents as Caddoan, has led the Sam Noble Oklahoma Museum of Natural History to determine the cultural affiliation of these human remains and associated funerary objects to the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

Determinations Made by the Sam Noble Oklahoma Museum of Natural History

Officials of the Sam Noble Oklahoma Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 544 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 78,485 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects is to the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Michael Mares, Sam Noble Oklahoma Museum of Natural History, 2401 Chautauqua Ave, Norman, Oklahoma, 73072, telephone (405) 325–8978, before May 2, 2012. Repatriation of the human remains and associated funerary objects to the Caddo Nation of

Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie) may proceed after that date if no additional claimants come forward.

The Sam Noble Oklahoma Museum of Natural History is responsible for notifying the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma that this notice has been published.

Dated: March 28, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–7864 Filed 3–30–12; 8:45 am]

BILLING CODE 4320–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0312–9815; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 10, 2012. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th Floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 17, 2012. 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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

COLORADO

Douglas County

Evans Homestead Rural Historic Landscape, Address Restricted, Franktown, 12000226

MAINE

Waldo County

Mill at Freedom Falls, S. side of Mill St., 125 ft. W. of Pleasant St., Freedom, 12000228

Montville Town House, 418 Center Rd., Montville, 12000227

York County

Frisbee, Frank C., Elementary School, 120 Rogers Rd., Kittery, 12000229

Waterboro Grange, No. 432, 31 West Rd., Waterboro, 12000230

MISSOURI

Clay County

Mt. Memorial Cemetery, 500 blk. E. Mississippi St., Liberty, 12000231

Jackson County

Squier Park Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Roughly bounded by Armour Blvd., The Paseo, 39th St., & Troost Ave., Kansas City, 12000232

St. Louis Independent City

Scudder Motor Truck Company Building, (Auto-Related Resources of St. Louis, Missouri MPS) 3942–62 Laclede Ave., St. Louis (Independent City), 12000233

NORTH CAROLINA

Catawba County

George, Lee & Helen, House, 16 9th Ave., NE., Hickory, 12000234

Davidson County

Chapel Hill Church Tabernacle, 1457 Chapel Hill Church Rd., Denton, 12000235

Gaston County

Downtown Mount Holly Historic District, 100 blks., N. & S. Main Sts. & W. Central Ave., Mount Holly, 12000236

Hertford County

Ahoskie Historic District, Roughly bounded by Pembroke Ave., Catherine Creek Rd., Colony, Alton, Maple, & South Sts., Ahoskie, 12000237

Iredell County

Mooresville Mill Village Historic District, Bounded by Wilson, Cauldwell, Kennette, Lutz, Messeck, & Catawba Aves., Smith & Bruce, Sts., & Shearers Rd., Mooresville, 12000238

VIRGINIA

Arlington County

Dominion Hills Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Roughly bounded by N. Four Mile Run Dr., N. McKinley Rd., N. Larrimore, N. Madison, N. Montana Sts., & 9th St. N., Arlington, 12000239

A request for removal has been made for the following resource:

KENTUCKY

Jefferson County

Drumanard (Boundary Increase), 6401 Wolf Pen Branch Rd., Louisville, 88002654

[FR Doc. 2012–7749 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, Walla Walla, WA, and the Alfred W. Bowers Laboratory of Anthropology, University of Idaho, Moscow, ID

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Defense, Army Corps of Engineers, Walla Walla District, in consultation with the appropriate Indian tribe, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District at the address below by May 2, 2012.

ADDRESSES: LTC David Caldwell, U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, 201 North Third Ave., Walla Walla, WA 99362, telephone (509) 527–7700.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District (Corps), Walla Walla, WA, and in the physical custody of the Alfred W. Bowers Laboratory of Anthropology, University

of Idaho (UI), Moscow, ID, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1964, a Washington State University (WSU) team excavated sites 10NP1 (near Captain John Creek) and 10NP27 (near Buffalo Draw) on the east side of the Snake River, in Nez Perce County, ID. Sites 10NP1 and 10NP27 are located on lands that were to be inundated for the Asotin Dam Reservoir, which was never constructed. While the sites are not on Corps property, the Corps has taken responsibility for the objects collected at the sites. Unassociated funerary objects from the sites were removed and transported to WSU, and were transferred to UI in 2000. Human remains with associated funerary objects from these two sites are included in a corresponding Notice of Inventory Completion. From site 10NP1, the 11 unassociated funerary objects include 1 lot of fragmented mammal bones; 1 charcoal sample; 1 piece of mussel shell; 1 piece of debitage; 5 snail shells; 1 soil sample; and 1 lot of rocks. From site 10NP27, the 44 unassociated funerary objects include 2 pieces of burned mammal bone; 1 burned rodent jaw; 28 pieces of debitage; 8 pipe bowl fragments; 1 projectile point; 1 projectile point base; 2 modified flakes; and 1 charcoal sample.

According to the 1969 survey report, the burials at site 10NP1 were typical of the late prehistoric period. The burials contained the partial skeletal remains of an adult male and an adult female, both arranged in flexed positions. Each individual was wrapped in tule matting, lay on an east-west axis and faced west toward the Snake River. According to the report, a subsurface cairn containing a hopper mortar had been constructed directly above the burial. The site is in the zone of exploitation of the Nez Perce village of *?ilaqatpá?tpo.*

In 1973, a UI team led by Roderick Sprague excavated sites 10NP109 (Upper Tammany), 10NP110 (Lower Tammany), and 10NP131 (Tammany Talus) near the confluence of Tammany Creek with the Snake River in Nez Perce County, ID. Sites 10NP109, 10NP110 and 10NP131 are located within the Lower Granite Lock and Dam Project on the Snake River. The Lower Granite Lock and Dam Project is managed by the Corps, who initiated a land acquisition processes for the Project in 1965. Human remains from these sites were reburied in 1978 at the Hill Top Cemetery in Spalding, ID, as part of the Nez Perce Grave Removal Project (NPGRP). The objects from these burials meet the definition of unassociated funerary objects.

Site 10NP109 contained 17 heavily potted burials. Unassociated funerary objects were recovered from Burials 4, 5, 7, 8, 10, 12, 14 and 16. The 61 unassociated funerary objects include 2 charcoal samples, 18 charcoal/organic samples, 1 chert projectile point, 6 copper fragments, 1 piece of chert debitage, 3 dentalium shell beads, 4 dentalium bead fragments, 18 dentalium shell fragments, 1 mussel shell pendant, 1 mussel shell, 5 mussel shell fragments and 1 water-snail shell. Objects from site10NP109 may date to the late prehistoric or protohistoric period due to the abundance of dentalia shells and the presence of iron and copper objects combined with a lack of glass trade beads. Human remains recovered from this site were examined by a physical anthropologist and one individual exhibited signs of fronto-occipital deformation, a common trait found in Native American remains.

Site 10NP110 contained 45 badly disturbed burials. Unassociated funerary objects were recovered from Burials 2–4, 11, 14, 16–19, 21–23, 25–45, and other unknown burial numbers. The 658 unassociated funerary artifacts include 1 hollowed bone fragment; 7 mammal bones (size not specified); 11 small mammal bones; 9 medium mammal bones; 20 large mammal bones; 1 elk antler; 11 charcoal samples; 1 copper pendant; 6 pieces of debitage; 535 dentalium shell; 4 dentalium shell fragments; 17 mussel shells; 1 lot of mussel shell; 1 piece of melted glass; 1 piece of granite; 11 ochre samples; 5 pestles; 2 pipe stem/bowls; 2 projectile points; 1 seed pod; 8 shell pendants; 1 piece of unidentified metal; 1 wood sample; and 1 lot of wood. Objects from site 10NP110 may date to the late prehistoric or protohistoric age due to the position of the burials, the abundance of dentalia shells and the characteristic application of red ochre to the human remains prior to burial. Human remains recovered from this site were examined by a physical anthropologist. Ten individuals exhibited signs of fronto-occipital deformation and two individuals exhibited signs of fronto-lambdoidal deformation, a common trait found in Native American remains.

Site 10NP131 contained 10 disturbed burials. Unassociated funerary objects were recovered from Burials 1, 2, 3, 4, 5, 7, 9, and other unidentified burials. The 52 unassociated funerary objects include 1 biface; 1 hollowed out bone artifact; 1 bone fragment; 1 piece of mammal bone; 1 triangular brass plate; 1 charcoal sample; 1 piece of charcoal; 3 pieces of debitage; 8 pieces of modified debitage; 2 dentalium beads; 2 mussel shells; 1 shell bead; 1 drill; 1 piece of matting; 15 metal fragments; 1 piece of red ochre; 1 stone pendant; 3 pieces of saw-cut lumber; 1 wood sample; 2 miscellaneous lithics; 2 charcoal pieces with 1 dentalium fragment; and 2 pestle fragments. Objects from site 10NP131 may date to the late prehistoric or protohistoric period, most likely prior to A.D. 1750, based on the position of the remains and the presence of dentalia shells, iron and copper objects, and a lack of glass trade beads. Westerly-orientated cairn burials are typical of the Lower Snake River region in the late prehistoric period.

Sites 10NP109, 10NP110 and 10NP131 are located near the historically important Nez Perce site *Hasotino,* meaning ''the great eel fishery,'' which was reported by H.J. Spinden in 1908. This site is located within the judicially established land area of the Nez Perce Tribe, Idaho.

Five lines of evidence—geographical, biological, archeological, anthropological and historical—support a cultural affiliation between the Nez Perce Tribe, Idaho, and the unassociated funerary objects identified in all of the sites above.

Determinations Made by the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District

Officials of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 826 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship or shared group identity that can be reasonably traced between the unassociated funerary objects and the Nez Perce Tribe, Idaho.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact LTC David Caldwell, U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, 201 North Third Ave., Walla Walla, WA 99362, telephone (509) 527–7700, before May 2, 2012. Repatriation of the unassociated funerary objects to the Nez Perce Tribe, Idaho, may proceed after that date if no additional claimants come forward.

The U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, is responsible for notifying the Nez Perce Tribe, Idaho, that this notice has been published.

Dated: March 28, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–7873 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice

SUMMARY: The California Department of Parks and Recreation, in consultation with the appropriate tribes, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural item may contact the California Department of Parks and Recreation.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural item should contact the California Department of Parks and Recreation at the address below by May 2, 2012.

ADDRESSES: Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, Sacramento, CA 95814, telephone (916) 653–8893.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the California Department of Parks and Recreation that meet the definition of unassociated funerary objects under 25 U.S.C. 3001. The unassociated funerary objects were removed from ten sites located in northeastern San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

The unassociated funerary objects were removed from ten sites located in northeastern San Diego County, CA. The geographical location of the ten sites indicates the unassociated funerary objects were recovered within the historically documented territory of the Cahuilla. The traditional aboriginal territory of the Cahuilla, as defined by anthropologist Lowell John Bean, encompasses a geographically diverse area of mountains, valleys and low desert zones. The southernmost boundary approximately followed a line from just below Borrego Springs to the north end of the Salton Basin and the Chocolate Mountains. The eastern boundary ran along the summit of the San Bernardino Mountains. The northern boundary stood within the San Jacinto Plain near Riverside, while the base of Palomar Mountain formed the western boundary. According to Bean and archeologist William D. Strong, the northern end of Anza-Borrego Desert State Park lies within the traditional territory of the Cahuilla and includes Borrego Palm Canyon, Coyote Canyon, Clark Valley, the Santa Rosa Mountains, Jackass Flat, Rockhouse Canyon, and Horse Canyon.

In 1955, Ben McCown collected a ceramic pipe bowl fragment from site CA–SDI–1465 (Hidden Springs) in the Borrego Palm Canyon and Jackass Flat areas of Anza Borrego Desert State Park, a large village site that had been occupied for a considerable period of time prior to and during the historic period and known to contain cremated human remains. The pipe bowl fragment is an unassociated funerary object based on the proximity of human cremation burials in the area, the ceremonial/personal nature of the object, and the burned exterior which is consistent with exposure to heat during cremation.

In 1955, park visitor Gary Masters collected a ceramic pipe from site VC–1 in the Borrego Palm Canyon area of Anza Borrego Desert State Park, an area known to contain large village sites with cremation burials. The pipe is an unassociated funerary object based on the proximity of human cremation burials in the area and the ceremonial/personal nature of the object. Although the object does not appear to be heavily burned, it is more likely than not to have come from a funerary context.

At an unknown date, Paul Jorgenson collected a small pinch bowl from site CA–SDI–224 (Middle Willows) in the Borrego Palm Canyon area of Anza Borrego Desert State Park, an area known to contain large village sites with cremation burials. The bowl is an unassociated funerary object based on the proximity of human cremation burials in the area and the ceremonial/personal nature of the object. Although the object does not appear to be heavily burned, it is more likely than not to have come from a funerary context.

Sometime in the 1970s, San Diego State University students and Professor Paul Ezell collected three pipe fragments, 75 burnt *Olivella* shell beads and a burnt glass bead from site CA–SDI–343 (Lower Willows) in the Borrego Palm Canyon area of Anza Borrego Desert State Park, a large village complex at Santa Caterina Spring known to contain cremation burials. The objects are unassociated funerary objects based on the proximity of human cremation burials in the area, the ceremonial/personal nature of the objects, and the burned exterior which is consistent with exposure to heat during cremation.

Sometime in the 1970s, archeologist William Seidel collected one small burnt clay ball from site CA–SDI–2328 (Lower Willows) in the Borrego Palm Canyon area of Anza Borrego Desert State Park, a large village complex at Santa Caterina Spring known to contain cremation burials. The object is an unassociated funerary based on the proximity of human cremation burials in the area, ceremonial/personal nature of the object, and the burned exterior which is consistent with exposure to heat during cremation.

Sometime in the 1970s, archeologist William Seidel collected one pipe bowl fragment from site CA–SDI–2336 in the Collins Valley area of Anza Borrego Desert State Park, a site known to have cremations and burials. The object is an unassociated funerary object based on the proximity of human cremation burials in the area, ceremonial/personal nature of the object, and the burned

exterior which is consistent with exposure to heat during cremation.

Sometime in the 1970s, archeologist William Seidel collected one pipe bowl fragment from site CA–SDI–2663 in the Borrego Sink area of Borrego Springs, CA, an area known to be a gathering place for ceremonial and social occasions and known to contain numerous cremation burials. The object is an unassociated funerary object based on the proximity of human cremation burials in the area, the ceremonial/personal nature of the object, and the burned exterior which is consistent with exposure to heat during cremation.

In 1969, an anonymous park visitor collected a quartz crystal, a *Haliotis* shell pendant fragment, and two burnt *Olivella* shell beads from an unidentified site above Lower Willows (most likely site CA–SDI–331 or site CA–SDI–343), in the Borrego Palm Canyon area of Anza Borrego Desert State Park, an area of known to contain large village sites with cremation burials. The objects are unassociated funerary objects based on the proximity of human cremation burials in the area, the ceremonial/personal nature of the objects, and the burned exterior which is consistent with exposure to heat during cremation.

In 1967, an anonymous park visitor collected a pipe bowl fragment from an unidentified site in the Coyote Canyon area of Anza Borrego Desert State Park, an area known to contain large village sites with cremation burials. The pipe fragment is an unassociated funerary object based on the proximity of human cremation burials in the area and the ceremonial/personal nature of the object. Although the object does not appear to be heavily burned, it is more likely than not to have come from a funerary context.

Sometime in the 1970s, archaeologist William Seidel collected a pipe fragment from an unidentified site located south of the elementary school in Borrego Springs, CA, an area known to contain a number of cremation burials and a gathering place for Cahuilla people for ceremonial and social occasions. The pipe is an unassociated funerary object based on the proximity of human cremation burials in the area and the ceremonial/personal nature of the object. Although the object does not appear to be heavily burned, it is more likely than not to have come from a funerary context.

Determinations Made by the California Department of Parks and Recreation

Officials of the California Department of Parks and Recreation have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 91 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of Cahuilla Indians, California (formerly the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation); Cabazon Band of Mission Indians, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of Cahuilla and Cupeno Indians, California (formerly the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation); Morongo Band of Mission Indians, California (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation); Ramona Band of Cahuilla, California (formerly the Ramona Band or Village of Cahuilla Mission Indians of California); Santa Rosa Band of Cahuilla Indians, California (formerly the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation); and Torres-Martinez Desert Cahuilla Indians, California (formerly the Torres-Martinez Band of Cahuilla Mission Indians of California) (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, Sacramento CA 95814, telephone (916) 653–8893, before May 2, 2012. Repatriation of the unassociated funerary objects to The Tribes may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying The Tribes that this notice has been published.

Dated: March 28, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–7889 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent to Repatriate Cultural Items: Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Maxwell Museum of Anthropology, in consultation with the appropriate Indian tribes, has determined that a collection of cultural items meet the definition of sacred objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Maxwell Museum of Anthropology.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Maxwell Museum of Anthropology at the address below by May 2, 2012.

ADDRESSES: David Phillips, Curator of Archaeology, Maxwell Museum of Anthropology, MSC01 1050, University of New Mexico, Albuquerque, NM 87131, telephone (505) 277–9229.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1949, the University of New Mexico (UNM) conducted an archeological field school at site LA 46316 (Wahaniak Shukuk Shtuitauwa/Correo Snake Pit) in Valencia County, NM. UNM students collected cultural objects from the site, many made of perishable materials. Limited additional collecting at the site by UNM probably

took place in the year or years immediately following the field school. The items removed from site LA 46316 include 90 sacred objects commonly called prayer sticks, materials for making prayer sticks, decomposed prayer sticks, and six lots of loose feathers, at least some of which were a part of prayer sticks.

The collection was transferred to the Maxwell Museum of Anthropology. Due to poor documentation and analysis, the full extent and nature of the collection emerged only recently, as analysts began detailed studies of the cultural objects. To date, the UMN collection from site LA 46316 includes the sacred objects detailed above as well as other cultural items and two partial sets of human remains, which require additional consultation and analysis before determinations can be made.

Based on radiocarbon dating, site LA 46316 was first used around B.C. 1400, and remained in use for centuries. The site is an ecumenical shrine, containing a travertine dome with dry deposits. The first documented excavation of the site occurred in 1917 by Elsie Clews Parsons, who reported even earlier activities on the site by ''treasure seekers.'' Parsons described the shrine as a Laguna shrine, but stated that the site was used by visitors from ''Acoma, Zuni, and other towns.'' At the time of the UNM field school in 1949, the site was on privately owned land, but more recently, the land area was purchased by the Pueblo of Laguna. Today, the Pueblo of Laguna continues to use the site and considers itself the custodian of the shrine. During a 2011 inspection of the sacred objects, delegates from the Pueblo of Laguna confirmed the presence of Laguna and Acoma sacred objects in the collection and indicated that other sacred objects may be related to the Zuni and Hopi tribes. The sacred objects in this notice are reasonably believed to be affiliated with the Pueblo of Laguna as well as other Pueblo Indians (including, but not limited to, the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico).

In response to consultations with Indian tribes (including in a letter from the Governor of the Pueblo of Laguna, representing the Pueblo in its role as land owner and custodian of the shrine), the staff of the Maxwell Museum will rebury the ''prayer sticks,'' ''prayer stick materials,'' and loose feathers from site LA 46316. The Pueblo of Laguna has agreed to provide access to the shrine and to supervise the return of the sacred objects.

Determinations Made by the Maxwell Museum of Anthropology

Officials of the Maxwell Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the 96 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects should contact David Phillips, Curator of Archaeology, Maxwell Museum of Anthropology, MSC01 1050, University of New Mexico, Albuquerque, NM 87131, telephone (505) 277–9229, before May 2, 2012. Repatriation of the sacred objects to the Pueblo of Laguna, New Mexico, may proceed after that date if no additional claimants come forward.

The Maxwell Museum of Anthropology is responsible for notifying the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: March 28, 2012

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–7884 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent to Repatriate Cultural Items: Rochester Museum & Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Rochester Museum & Science Center, in consultation with the appropriate Indian tribe, has determined that the cultural items meet the definition of both sacred objects and objects of cultural patrimony and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Rochester Museum & Science Center.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Rochester Museum & Science Center at the address below by May 2, 2012.

ADDRESSES: Adele DeRosa, Rochester Museum & Science Center, 657 East Avenue, Rochester, NY 14607, telephone (585) 271–4552 x 302.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Rochester Museum & Science Center that meet the definition of both sacred objects and objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Between 1923 and 1984, the Rochester Museum & Science Center acquired 36 medicine faces made by members of the Seneca Nation of New York from a variety of sources. All of these medicine faces are currently in the possession of the Rochester Museum & Science Center.

In 1928, Alvin Dewey received from the Rev. John W. Sanborn collection two 19th century cornhusk medicine faces (29.259.36/AE 2914/D 10626 and 29.259.77/AE 2914/D 10625). Rev. Sanborn was appointed missionary to the Seneca Indians at Gowanda in 1877 and was adopted into the wolf clan.

In 1934, Arthur Parker acquired two 19th century cornhusk medicine faces (34.141.1/AE 2480 and 34.141.2/AE 2480) and one 19th century wooden medicine face (34.141.3/AE 2481) on the Cattaraugus Reservation.

In 1924, E.D. Putnam purchased two 19th century wooden medicine faces (24.61.5/AE 0500 and 24.61.13/AE 0509) on the Allegany Reservation.

In 1923, E.D. Putnam purchased two 19th century small wooden medicine faces (23.32.77/AE 363A and 23.32.40/AE 0366) and three 19th century large

wooden medicine faces (23.32.24/AE 0349; 23.32.45/AE 0371; and 23.47.1/AE 0404) on the Cattaraugus Reservation.

On August 18, 1923, E.D. Putnam purchased two 19th century cornhusk medicine faces (23.32.42/AE 0368 and 23.32.43/AE 0368) and one 19th century cornhusk medicine face for a leader's pole (23.32.37/AE 0363B) on the Cattaraugus Reservation.

On August 18, 1923, E.D. Putnam purchased two 19th century cornhusk medicine faces (23.32.4/AE 0330 and 24.61.10/AE 0505) on the Allegany Reservation.

In 1923, E.D. Putnam likely purchased one 19th century cornhusk medicine face (73.00.2.1) on either the Cattaraugus or Allegany Reservations.

In 1926, E.J. Burke collected one 19th century cornhusk medicine face (26.26.2/AE 0769) from an unknown location.

In 1925, Everett R. Burmaster collected two 19th century cornhusk medicine face (25.69.1/AE 0482A and 25.69.2/AE 0482B) and one 19th century wooden medicine face (25.69.1/AE 0309) on the Cattaraugus Reservation.

In 1926, Everett R. Burmaster collected one 19th century wooden medicine face (26.63.1/AE 0010) on the Cattaraugus Reservation.

In 1928, Everett R. Burmaster collected one partially carved 19th century medicine face on a tree trunk (28.92.1/AE 0130) on the Cattaraugus Reservation.

In 1927, the Rochester Museum of Arts and Science (later the Rochester Museum & Science Center) purchased one 19th century wooden medicine face (27.81.463/AE 1171) from the Opdyke estate.

In 1925, an unknown individual collected one 19th century wooden medicine face with two bundles (25.75.1/AE 0578) in New York State.

In 1928, an unknown individual collected one late 19th century wooden medicine face (28.185.1/AE 1135) near Chautauqua Lake, NY.

In 1926, Arthur Parker collected one 19th century cornhusk medicine face (26.70.1/AE 0762) from an unknown location.

In 1931, an unknown individual collected one early 20th century wooden medicine face (31.147.1/AE 2276) on the Cattaraugus Reservation.

In 1938, an unknown individual collected two early 20th century wooden medicine faces (38.367.2/AE 7238 and 38.367.1/AE 7238) on the Cattaraugus Reservation.

In 1935, the Rochester Museum of Arts and Science (later the Rochester Museum & Science Center) received one small early 20th century wooden medicine face (35.252.1/AE 3623) made on the Cattaraugus Reservation and donated by an unknown individual.

In 1984, the Rochester Museum & Science Center purchased one 20th century cornhusk medicine face (84.171.1) made on the Cattaraugus Reservation in 1980.

In 1929, Albert Heath purchased one 19th century small wooden medicine face (29.273.1/AE 1690) from an unknown location.

In 1923, an unknown individual purchased two early 20th century wooden medicine faces (23.47.2/AE 0405 and 23.47.3/AE 0406) at the Seneca Trading Post, in Collins, NY.

Traditional religious leaders of the Seneca Nation of New York have identified these medicine faces as being needed for the practice of traditional Native American religions by present-day adherents. In the course of consultations with representatives of the Seneca Nation of New York, it was shown that individuals who carved these medicine faces did not have the authority to alienate them to a third party. Because the individuals who carved these faces did not have the authority to alienate them, a third party could not have been given any ownership or property rights over the medicine faces and therefore, could not have properly transferred them to the Rochester Museum & Science Center. Museum documentation, supported by oral evidence presented during consultation by Seneca Nation of New York representatives, indicates that these medicine faces are culturally affiliated with the Seneca Nation of New York. Museum representatives also consulted with other Haudenosaunee and non-Haudenosaunee consultants.

Determinations made by the Rochester Museum & Science Center

Officials of the Rochester Museum & Science Center, Rochester have determined that:

- Pursuant to 25 U.S.C. 3001 (3)(D), the 36 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present adherents, and have an ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between these medicine faces and the Seneca Nation of New York.

Additional Requestors and Disposition

Representatives of any other Indian Nation or tribe that believes itself to be culturally affiliated with these medicine faces should contact Adele DeRosa, Rochester Museum & Science Center, Rochester, NY 14607, telephone (585) 271–4552 x 302, before May 2, 2012. Repatriation of these medicine faces to the Seneca Nation of New York may proceed after that date if no additional claimants come forward.

The Rochester Museum & Science Center, Rochester, NY, is responsible for notifying the Seneca Nation of New York that this notice has been published.

Dated: March 28, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–7882 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent to Repatriate Cultural Items: Rochester Museum & Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Rochester Museum & Science Center, in consultation with the appropriate Indian tribe, has determined that the cultural items meet the definition of both sacred objects and objects of cultural patrimony and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Rochester Museum & Science Center.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Rochester Museum & Science Center at the address below by May 2, 2012.

ADDRESSES: Adele DeRosa, Rochester Museum & Science Center, 657 East Avenue, Rochester, NY 14607, telephone (585) 271–4552 x 302.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Rochester Museum & Science Center that meet the definition of both sacred objects and

objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1935, the Works Progress Administration/Indian Arts Project paid members of the Seneca Nation of New York, at Cattaraugus, to create a variety of ethnographic objects. This project was directed by Arthur C. Parker, director, Rochester Museum of Arts and Sciences (now the Rochester Museum & Science Center), with the intent of both giving employment to the Seneca people and building a collection for the museum. In total, there are 79 medicine faces described in this notice, all created in 1935 under the auspices of that project.

Eighteen objects are large cornhusk medicine faces made by several individuals on the Cattaraugus Reservation: 35.266.2/AE 2681; 35.266.4/AE 2750; 35.266.5/AE 2751; 35.266.6/AE 3479; 35.266.8/AE 3483; 35.266.10/AE 3964; 35.266.11/AE 3965; 35.266.12/AE 3966; 35.340.1/AE 3242; 35.340.2/AE 3478; 35.340.3/AE 3480; 35.340.4/AE 3481; 35.340.5/AE 3621; 35.340.8/AE 4098); 77.00.68.1; 35.291.6/AE 3622; 35.320.13/AE 4194; 36.396.1/AE 4387; 35.290.1/AE 2760); 35.290.2/AE 2800; 35.290.4/AE 3462; 35.290.6/AE 4036; 35.290.7/AE 4038; 35.290.8/AE 4040; 35.290.9/AE 4044; 35.290.11/AE 4136; 35.290.13/AE 4177; and 35.290.14/AE 5706.

Fifty-eight objects are large wooden medicine faces made by several individuals on the Cattaraugus Reservation: 35.268.17/AE 3164; 35.268.18/AE 3166; 35.268.19/AE 3177; 35.268.20/AE 3333; 35.268.21/AE 3334; 35.268.22/AE 3515; 35.268.23/AE 3516; 35.268.24/AE 4027; 35.268.25/AE 4033; 35.268.26/AE 4041; 35.268.27/AE 4042; 35.268.28/AE 4043; 35.268.2/AE 4134; 35.268.29/AE 4139; 35.268.30/AE 4142; 35.268.31/AE 4143; 35.268.32/AE 5705; and 35.268.33/AE 5707; 35.280.24/AE 2847; 35.280.11/AE 2848; 35.280.13/AE 3335; 35.280.14/AE 3513; 35.280.15/AE 4034; 35.280.16/AE 4039; 35.280.17/AE 4047; 35.280.18/AE 4048; 35.280.22/AE 5727; 35.280.23/AE 5728; 35.280.21/AE 5693; 35.295.30/AE 2006 and 35. 295.31/AE 4176; 35.299.30/AE 4050 and 35.299.31/AE 4184; 35.303.1/AE 4856 and 35.303.2/AE 4857; 35.315.11/AE 5726 and 35.315.10/AE 4045; 35.285.47/AE 3517; 35.285.49/AE 4031; 35.285.52/AE 4158; 35.285.53/AE 4210; 35.285.57/AE 4214; 35.285.55/AE 5708; and 35.285.56/AE 5709; 35.288.25/AE 4137 and 35.288.26/AE 4144; 35.257.1/AE 4138; and 35.339.18/AE 3165.

Three objects are large cornhusk medicine faces made by individuals most likely on the Cattaraugus Reservation: 98.00.03.1/E 13.1.286; 98.00.04.1; and 98.00.05.1.

Traditional religious leaders of the Seneca Nation of New York have identified these medicine faces as being needed for the practice of traditional Native American religions by present-day adherents. In the course of consultations with representatives of the Seneca Nation of New York, it was shown that individuals who carved these medicine faces did not have the authority to alienate the objects to a third party, including the Rochester Museum & Science Center. Museum documentation, supported by oral evidence presented during consultation with Seneca Nation of New York representatives, indicates that these medicine faces are culturally affiliated with the Seneca Nation of New York. Museum representatives also consulted with other Haudenosaunee and non-Haudenosaunee consultants.

Determinations Made by the Rochester Museum & Science Center

Officials of the Rochester Museum & Science Center have determined that:

- Pursuant to 25 U.S.C. 3001 (3)(D), the 79 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present adherents, and have an ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between these medicine faces and the Seneca Nation of New York.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Adele DeRosa, Rochester Museum & Science Center, Rochester, NY 14607, telephone (585) 271–4552 x 302, before May 2, 2012. Repatriation of these objects to the Seneca Nation of New York may proceed after that date if no additional claimants come forward.

The Rochester Museum & Science Center, Rochester, NY, is responsible for notifying the Seneca Nation of New York that this notice has been published.

Dated: March 28, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–7880 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent to Repatriate Cultural Items: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The California Department of Parks and Recreation, in consultation with the appropriate tribes, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural item may contact the California Department of Parks and Recreation.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural item should contact the California Department of Parks and Recreation at the address below by May 2, 2012.

ADDRESSES: Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, Sacramento, CA 95814, telephone (916) 653–8893.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the California Department of Parks and Recreation that meet the definition of unassociated funerary objects under 25 U.S.C. 3001. The unassociated funerary objects were removed from twelve sites located in San Diego and Imperial counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American cultural item. The National

Park Service is not responsible for the determinations in this notice.

History and description of the cultural item

The unassociated funerary objects were removed from twelve sites located in San Diego and Imperial Counties, CA. The geographical location of these sites indicates that the unassociated funerary objects were recovered within the historically documented territory shared by the Cahuilla and the Kumeyaay. Northern areas of the Anza Borrego Desert State Park, such as the San Felipe Creek drainage, Culp Valley, Pinyon Ridge, the Borrego Badlands, and the Borrego Valley, may have formed a so-called ''transitional zone'' between the Cahuilla and the Kumeyaay. The two groups would have used the areas jointly or, as convenient, for subsistence or ceremonial needs.

The traditional territory of the Kumeyaay includes a significant portion of present-day San Diego County up to the Aqua Hedionda area and inland along the San Felipe Creek (just south of Borrego Springs). Bound to the east by the Sand Hills in Imperial County and includes the southern end of the Salton Basin and all of the Chocolate Mountains, the territory extends southward to Todos Santos Bay, Laguna Salada and along the New River in northern Baja California. The central and southern portions of Anza Borrego Desert State Park lie within the traditional territory of the Kumeyaay.

The traditional aboriginal territory of the Cahuilla, as defined by anthropologist Lowell John Bean, encompasses a geographically diverse area of mountains, valleys and low desert zones. The southernmost boundary approximately followed a line from just below Borrego Springs to the north end of the Salton Basin and the Chocolate Mountains. The eastern boundary ran along the summit of the San Bernardino Mountains. The northern boundary stood within the San Jacinto Plain near Riverside, while the base of Palomar Mountain formed the western boundary. According to Bean and archeologist William D. Strong, the northern end of Anza Borrego Desert State Park lies within the traditional territory of the Cahuilla and includes the areas of Borrego Palm Canyon, Coyote Canyon, Clark Valley, the Santa Rosa Mountains, Jackass Flat, Rockhouse Canyon and Horse Canyon.

At an unknown date, Harvey Clark collected a small pottery bowl from site CA–SDI–4443 in the Barrel Springs area of Ocotillo Wells State Vehicular Recreation Area, an area of the park known to contain large village sites with cremation burials. The bowl is an unassociated funerary object based on the proximity of human cremation burials in the area and the personal nature of the object. Although the object does not appear to be heavily burned, it is more likely than not to have come from a funerary context.

At an unknown date, an unidentified individual collected one lot of charcoal samples from an unidentified cremation burial within Anza Borrego Desert State Park. In 1989, the objects were found in the Paul Ezell Archives at the Arizona State Museum and subsequently returned to the California Department of Parks and Recreation in 2000. The samples are unassociated funerary objects based upon the labels which read: ''Charcoal Do Not Open, Yuman Inhumation, Anza-Borrego.''

At an unknown date prior to 1980, an unidentified individual collected a *Haliotis* ornament, 12 melted glass beads and three burnt pottery fragments from an unidentified site along the shoreline of the Salton Sea in Lower Borrego Valley. The objects were donated to the California Department of Parks and Recreation by Ada Jackson in 1980. The objects were recovered from the shoreline of the ancient Lake Cahuilla where there are extremely dense concentrations of habitation and cremation deposits. The objects are unassociated funerary objects based on the proximity of human cremation burials in the area, the burned exterior which is consistent with exposure to heat during cremation, and the description on the *Haliotis* ornament which states ''Cremation Associated.''

Sometime in the 1970s, archeologist William Seidel collected a burnt potsherd from site D–7–5 northwest of Borrego Springs, CA, an area known to contain large village sites with cremation burials. The potsherd is an unassociated funerary object based on the proximity of human cremation burials, the personal nature of the object, and the burned exterior which is consistent with exposure to heat during cremation.

At an unknown date, Phil Benge collected a small pottery bowl from an unidentified site near Tamarisk Grove in Anza Borrego Desert State Park, an area known to contain major village sites with cremation burials. The bowl is an unassociated funerary object based on the proximity of human cremation burials in the area and the ceremonial nature of the object. Small bowls such as this were not ordinary household utilitarian vessels but were used by ceremonial leaders to mix medicinal and ceremonially ingested substances, sometimes used in funerary and mourning ceremonies. Although the object does not appear to be heavily burned, it is more likely than not to have come from a funerary context.

Sometime in the 1970s, archeologist William Seidel collected eight *Olivella* shell beads from an unidentified site south of the airport in Borrego Springs, CA, an area known to contain large village sites with cremation burials. The beads are unassociated funerary objects based upon the proximity of human cremation burials in the area and the ceremonial/personal nature of the objects. Although the objects do not appear to be heavily burned, they is more likely than not to have come from a funerary context.

At an unknown date between 1945 and 1955, Mrs. Jane Thomas collected one lot of over 200 burnt shell beads from an unidentified site in mesquite dunes in the Ocotillo Badlands east of Ocotillo Wells, an area known to contain large village sites with cremation burials. The beads are unassociated funerary objects based upon the proximity of human cremation burials in the area, the personal nature of the objects, and the burned exterior which is consistent with exposure to heat during cremation.

At an unknown date, B. Frizzel collected two burnt *Olivella* shell beads from an unidentified site near Ocotillo Wells in San Diego County, CA. The beads are unassociated funerary objects based upon the personal nature of the objects and the burned exterior which is consistent with exposure to heat during cremation.

At an unknown date, Harry Dick Ross collected one lot of over 80 burnt *Olivella* shell beads from an unidentified site in Lower Borrego Valley in San Diego and Imperial County, CA, an area known to contain large village sites with cremation burials. The beads are unassociated funerary objects based upon the proximity of human cremation burials in the area, the personal nature of the objects, and the burned exterior which is consistent with exposure to heat during cremation.

At an unknown date, an unidentified individual collected a pipe stem fragment from an unidentified site in the Harper Flat area of Anza Borrego Desert State Park. The object was donated to the California Department of Parks and Recreation by Harry D. Ross in 1979. This unassociated funerary object was recovered from an area known to contain large village sites with cremation burials. The pipe fragment to be an unassociated funerary object based upon the proximity of human cremation burials in the area and the

ceremonial/personal nature of the object. Although the object does not appear to be heavily burned, it is more likely than not to have come from a funerary context.

At an unknown date, an unidentified individual collected one lot of more than 100 burnt beads, seven pipe fragments, a pottery ball, and a pottery object from an unidentified site in the Borrego Valley area of Anza Borrego Desert State Park. These objects were a part of the DuVall Collection, which was later donated to California Department of Parks and Recreation in the 1970s. The DuVall Collection represents cultural materials collected on and around an early settlers' ranch in Borrego Valley. Given the lack of specific provenience, the geographical location of the site is impossible to determine. Based on the provenience of the other objects from the DuVall Ranch in Borrego Valley, it can be reasonably assumed that these remains were collected from the same geographic region. These unassociated funerary objects are thought to have been collected from an area know to contain extensive habitation and burial deposits. The Borrego Sink was an area where both the Kumeyaay and the Cahuilla peoples came together for ceremonial events such as cremation and mourning ceremonies. The objects are unassociated funerary objects based on the ceremonial/personal nature of the objects common to cremation burials of the Kumeyaay and Cahuilla and the burned exterior which is consistent with exposure to heat during cremation.

At an unknown date, individuals (including DC Barbee, F. Fairchild, Ada Jackson, Harry D. Ross and Ben McCown) collected objects from an unknown number of archaeological sites and these materials were stored in the Borrego Archaeological Research Center in Anza Borrego Desert State Park. The unassociated funerary objects consist of 57 burnt shell beads, 6 pipe fragments and one small pottery bowl. Though no specific provenience information is available for these objects, they appear consistent with the material culture of Cahuilla or Kumeyaay in the region of Anza Borrego Desert State Park. In this region, pipes, shell beads, and small pottery bowls were often disposed of when a person died and was cremated. The objects are ceremonial/personal in nature, and although the object does not appear to be heavily burned, it is more likely than not to have come from a funerary context.

Determinations made by the California Department of Parks and Recreation

Officials of the California Department of Parks and Recreation have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 107 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of Cahuilla Indians, California (formerly the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation); Cabazon Band of Mission Indians, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California: Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California, and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation); Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Los Coyotes Band of Cahuilla and Cupeno Indians, California (formerly the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation); Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; Morongo Band of Mission Indians, California (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation); Ramona Band of Cahuilla, California (formerly the Ramona Band or Village of Cahuilla Mission Indians of California); San Pasqual Band of Diegueno Mission Indians of California; Santa Rosa Band of Cahuilla Indians, California (formerly the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation); Sycuan Band of the Kumeyaay Nation; and Torres-Martinez Desert Cahuilla Indians, California (formerly the Torres-Martinez Band of Cahuilla Mission Indians of California) (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, Sacramento CA 95814, telephone (916) 653–8893, before May 2, 2012. Repatriation of the unassociated funerary objects to The Tribes may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying The Tribes that this notice has been published.

Dated: March 28, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–7876 Filed 3–30–12; 8:45 am]

BILLING CODE 4310–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent to Repatriate Cultural Items: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The California Department of Parks and Recreation, in consultation with the appropriate tribes, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural item may contact the California Department of Parks and Recreation.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural item should contact the California Department of Parks and Recreation at the address below by May 2, 2012.

ADDRESSES: Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation,

1416 9th Street, Room 902, Sacramento, CA 95814, telephone (916) 653–8893.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the California Department of Parks and Recreation that meet the definition of unassociated funerary objects under 25 U.S.C. 3001. The unassociated funerary objects were removed from eight sites located in San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The unassociated funerary objects were removed from eight sites located in San Diego County, CA. The geographical location of these eight sites indicates the unassociated funerary objects were recovered within the historically documented territory of the Kumeyaay. The traditional territory of the Kumeyaay includes a significant portion of present-day San Diego County up to the Aqua Hedionda area and inland along the San Felipe Creek (just south of Borrego Springs). Bound to the east by the Sand Hills in Imperial County and includes the southern end of the Salton Basin and all of the Chocolate Mountains, the territory extends southward to Todos Santos Bay, Laguna Salada and along the New River in northern Baja California. The central and southern portions of Anza Borrego Desert State Park lie within the traditional territory of the Kumeyaay.

In 1949, archeologist Malcolm Rogers excavated site CA–SDI–913 (Arrowmaker's Ridge) within Cuyamaca Rancho State Park, and human remains from this site were in the possession of the San Diego Museum of Man. One artifact from site CA–SDI–913, a ceramic bow pipe, is in the possession of California State Parks. The ceramic bow pipe is an unassociated funerary object based on the proximity of human burials in the area, the ceremonial nature of the object, and the common use of similar objects in burial contexts.

In 1960, archeologist Malcolm Rogers collected a ceramic pipe bowl fragment from site CA–SDI–948 (Indian Gorge) in the Anza Borrego Desert State Park, a site consisting of a rock shelter and associated village complex known to contain cremated human remains. The pipe bowl fragment is an unassociated funerary object based on the proximity of human cremation burials in the area, the ceremonial/personal nature of the object, and the burned exterior which is consistent with exposure to heat during cremation.

In 1976, archeologists with the Archaeological Survey Association (A.S.A) collected a buffware pipe handle fragment and cremated human remains from site CA–SDI–4009 in the McCain Valley Recreation Area. The human remains have been repatriated, but the pipe handle fragment remains in the possession of California State Parks. The pipe handle fragment is an unassociated funerary object based on the proximity of human burials in the area, the ceremonial nature of the object, and the common use of similar objects in burial contexts.

At an unknown date, Lloyd Findley collected 33 burnt *Olivella* shell beads, two burnt bone beads, and a ceramic pipe stem fragment from an unknown site in the Mason Valley area of Anza Borrego Desert State Park. The objects are unassociated funerary objects based upon the proximity of extensive and concentrated village sites with cremation burials in the area, the ceremonial/personal nature of the objects, and the burned exterior which is consistent with exposure to heat during cremation.

At an unknown date prior to 1979, an unidentified individual collected a burnt ceramic pipe bowl fragment from an unidentified site in Cuyamaca Rancho State Park, and the object was donated to the California Department of Parks and Recreation by Harry D. Ross in 1979. The ceramic pipe bowl fragment is an unassociated funerary object based on the proximity of extensive and concentrated village sites with cremation burials in the area, the ceremonial/personal nature of the object, and the burned exterior which is consistent with exposure to heat during cremation.

At an unknown date, John Wright and Virginia Carlsberg collected 17 burnt *Olivella* shell beads and two melted glass beads from an unknown site located near Fish Creek and Split Mountain in Anza Borrego Desert State Park. The objects are unassociated funerary objects based on the proximity of extensive and concentrated village sites with cremation burials in the area, the ceremonial/personal nature of the objects, and the burned exterior which is consistent with exposure to heat during cremation.

At an unknown date, an unidentified person collected a *Cerithiopsis* shell altered with a hole punched near its outer lip and one lot of burned and unburned shell fragments from an unknown site near East Mesa within Cuyamaca Rancho State Park. The catalog records associate these objects with cremated human remains though the human remains do not appear to be in the possession of California State Parks. The objects are unassociated funerary objects based upon the catalog record, the proximity of extensive and concentrated village sites with cremation burials in the area, the ceremonial/personal nature of the objects, and the burned exterior which is consistent with exposure to heat during cremation.

At an unknown date, an unidentified person collected two burnt *Olivella* shell beads and 47 melted glass beads from an unknown site within Cuyamaca Rancho State Park. The objects are unassociated funerary objects based on the proximity of extensive and concentrated village sites with cremation burials in the area, the ceremonial/personal nature of the objects, and the burned exterior which is consistent with exposure to heat during cremation.

Determinations Made by the California Department of Parks and Recreation

Officials of the California Department of Parks and Recreation have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 110 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California: Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California, and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation); Inaja Band of Diegueno

Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; and the Sycuan Band of the Kumeyaay Nation (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Rebecca Carruthers, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 902, Sacramento CA 95814, telephone (916) 653–8893, before May 2, 2012. Repatriation of the unassociated funerary objects to The Tribes may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying The Tribes that this notice has been published.

Dated: March 28, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–7872 Filed 3–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0020]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice of an extension of a currently approved information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information requests that we will submit to the Office of Management and Budget (OMB) for review and approval. OMB formerly approved this information collection request (ICR) under OMB Control Number 1010–0139. After the Secretary of the Department of the Interior established ONRR (the former Minerals Revenue Management, a program under the Minerals Management Service) on October 1, 2010, OMB approved a new series number for ONRR and renumbered our ICRs. This ICR covers the paperwork requirements in the regulations under title 30, *Code of Federal Regulations* (CFR), parts 1210 and 1212 (previously 30 CFR parts 210 and 212). Also, this ICR pertains to onshore and offshore royalty and production reporting on oil, gas, and geothermal leases on Federal and Indian lands. The revised title of this ICR is ''30 CFR Parts 1210 and 1212, Royalty and Production Reporting.'' There are three forms associated with this information collection.

DATES: Submit written comments on or before June 1, 2012.

ADDRESSES: You may submit comments on this ICR to ONRR by any of the following methods (please use ''ICR 1012–0004'' as an identifier in your comment):

- Electronically go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ''ONRR–2011–0020,'' then click ''Search.'' Follow the instructions to submit public comments. ONRR will post all comments.
- Mail comments to Armand Southall, Regulatory Specialist, ONRR, P.O. Box 25165, MS 64000A, Denver, Colorado 80225–0165.
- Hand-carry comments, or use an overnight courier service to ONRR. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Armand Southall, Regulatory Specialist, at (303) 231–3221, or email to *armand.southall@onrr.gov.* You may also contact Mr. Southall to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information. You may also review the information collection online at *http://www.reginfo.gov/public/PRAMain.*

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Parts 1210 and 1212, Royalty and Production Reporting.

OMB Control Number: 1012–0004.

Bureau Form Number: Forms MMS–2014, MMS–4054, and MMS–4058.

Note: ONRR will publish a rule updating our form numbers to Forms ONRR–2014, ONRR–4054, and ONRR–4058.

Abstract: The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary is required, by various laws, to manage mineral resource production from Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected under those laws. We have posted those laws pertaining to mineral leases on Federal and Indian lands and the OCS at *http://www.onrr.gov/Laws_R_D/PublicLawsAMR.htm.*

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

Effective October 1, 2010, ONRR reorganized and transferred their regulations from chapter II to chapter XII in title 30 of the *Code of Federal Regulations* (CFR), resulting in a change to our citations. You can find the information collections covered in this ICR at 30 CFR part 1210, subparts B, C, and D, which pertain to production and royalty reports; and part 1212, subpart B, which pertains to recordkeeping of reports and files. All data reported is subject to subsequent audit and adjustment.

General Information

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee, or his designee, is required to report various kinds of information to the lessor relative to the disposition of the leased minerals.

The ONRR financial accounting system is an integrated computer system that includes royalty, rental, bonus, and other payments; sales volumes and values; and royalty values as submitted by reporters. In the system, ONRR compares production volumes with royalty volumes to verify that reporters reported and paid proper royalties for the minerals produced. Additionally, we share the data electronically with the Bureau of Safety and Environmental Enforcement, Bureau of Land Management, Bureau of Indian Affairs, and Tribal and State governments so they can perform their lease management responsibilities.

We use the information collected in this ICR to ensure that royalty is appropriately paid, based on accurate production accounting on oil, gas, and geothermal resources produced from Federal and Indian leases. The requirement to report accurately and timely is mandatory. Please refer to the

chart for all reporting requirements and associated burden hours.

Royalty Reporting

The regulations require payors (reporters) to report and to remit royalties on oil, gas, and geothermal resources produced from leases on Federal and Indian lands. The following form is used for royalty reporting:

Form MMS–2014, Report of Sales and Royalty Remittance. Reporters submit this form monthly to report royalties on oil, gas, and geothermal leases, certain rents, and other lease-related transactions (e.g., transportation and processing allowances, lease adjustments, and quality and location differentials).

Production Reporting

The regulations require operators (reporters) to submit production reports if they operate a Federal or Indian onshore or offshore oil and gas lease, or federally approved unit or communitization agreement. The ONRR financial accounting system tracks minerals produced from Federal and Indian lands, from the point of production to the point of disposition, or royalty determination, and/or point of sale. The reporters use the following forms for production accounting and reporting:

Form MMS–4054, Oil and Gas Operations Report (OGOR). Reporters submit this form monthly for all production reporting for Outer Continental Shelf, Federal, and Indian leases. ONRR compares the production information with sales and royalty data that reporters submit on Form MMS–2014 to ensure that the latter reported and paid the proper royalties on the oil and gas production to ONRR. ONRR uses the information from OGOR parts A, B, and C to track all oil and gas from the point of production to the point of first sale, or other disposition.

Form MMS–4058, Production Allocation Schedule Report (PASR). Reporters submit this form monthly. The facility operators manage the facilities and measurement points where they commingle the production from an offshore Federal lease or metering point with production from other sources before they measure it for royalty determination. ONRR uses the data to determine if the payors reported reasonable sales.

OMB Approval

We will request OMB approval to continue to collect this information. If ONRR does not collect this information, this would limit the Secretary's ability to discharge fiduciary duties and may also result in loss of royalty payments. We protect the proprietary information that it receives and do not collect items of a sensitive nature. It is mandatory that the reporters submit Forms MMS–2014, MMS–4054, and MMS–4058.

Frequency: Monthly.

Estimated Number and Description of Respondents: 3,870 oil, gas, and geothermal reporters.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 337,933 hours.

We have changed our estimates of the number of respondents due to updated data.

We have not included in our estimates certain requirements performed in the normal course of business, considered as usual and customary. We display the estimated annual burden hours by CFR section and paragraph in the following chart.

Respondents' Estimated Annual Burden Hours

30 CFR Part 1210	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
30 CFR 1210—FORMS AND REPORTS				
Subpart B—Royalty Reports—Oil, Gas, and Geothermal Resources				
1210.52 (a) and (b)	**1210.52 What royalty reports must I submit?** You must submit a completed Form MMS–2014, Report of Sales and Royalty Remittance, to ONRR with: (a) All royalty payments; and (b) Rents on nonproducing leases, where specified in the lease.	**Form MMS-2014**		
		Electronic* (approximately 99 percent)		
		3 min.	4,688,216	234,411
		Manual* (approximately 1 percent)		
1210.53 (a), (b), and (c)	**1210.53 When are my royalty reports and payments due?** (a) Completed Forms MMS–2014 for royalty payments and the associated payments are due by the end of the month following the production month (see also §1218.50). (b) Completed Forms MMS–2014 for rental payments, where applicable, and the associated payments are due as specified by the lease terms (see also §1218.50). (c) You may submit reports and payments early.	7 min.	47,356	5,526
1210.54 (a), (b), and (c)	**1210.54 Must I submit this royalty report electronically?** (a) You must submit Form MMS–2014 electronically unless you qualify for an exception under §1210.55(a). (b) You must use one of the following electronic media types, unless ONRR instructs you differently * * * (c) Refer to our electronic reporting guidelines in the ONRR *Minerals Revenue Reporter Handbook*, for the most current reporting options, instructions, and security measures. The handbook may be found on our Internet Web site or you may call your ONRR customer service representative * * *			
	* * * * *			
	SUBTOTAL FOR ROYALTY REPORTING		**4,735,572**	**239,937**

30 CFR Part 1210	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
Subpart C—Production Reports—Oil and Gas				
1210.102 (a)(1)(i) and (ii) 1210.102 (a)(2)(i) and (ii)	**1210.102 What production reports must I submit?** (a) Form MMS–4054, Oil and Gas Operations Report. If you operate a Federal or Indian onshore or OCS oil and gas lease or federally approved unit or communitization agreement that contains one or more wells that are not permanently plugged or abandoned, you must submit Form MMS–4054 to ONRR: (1) You must submit Form MMS–4054 for each well for each calendar month, beginning with the month in which you complete drilling, unless: (i) You have only test production from a drilling well; or (ii) The ONRR tells you in writing to report differently. (2) You must continue reporting until: (i) The Bureau of Land Management (BLM) and [Bureau of Safety and Environmental Enforcement] approves all wells as permanently plugged or abandoned or the lease or unit or communitization agreement is terminated; and (ii) You dispose of all inventory.	Burden hours covered under 1210.104(a) and (b).		

30 CFR Part 1210	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
1210.102 (b)(1) 1210.102 (b)(2)(i)-(vi)	(b) Form MMS–4058, Production Allocation Schedule Report. If you operate an offshore facility measurement point (FMP) handling production from a Federal oil and gas lease or federally approved unit agreement that is commingled (with approval) with production from any other source prior to measurement for royalty determination, you must file Form MMS–4058. (1) You must submit Form MMS–4058 for each calendar month beginning with the month in which you first handle production covered by this section. (2) Form MMS–4058 is not required whenever all of the following conditions are met: (i) All leases involved are Federal leases; (ii) All leases have the same fixed royalty rate; (iii) All leases are operated by the same operator; (iv) The facility measurement device is operated by the same person as the leases/agreements; (v) Production has not been previously measured for royalty determination; and (vi) The production is not subsequently commingled and measured for royalty determination at an FMP for which Form MMS–4058 is required under this part.	Burden hours covered under 1210.104(a) and (b).		
1210.103 (a) and (b)	**1210.103 When are my production reports due?** (a) The ONRR must receive your completed Forms MMS–4054 and MMS–4058 by the 15th day of the second month following the month for which you are reporting. (b) A report is considered received when it is delivered to ONRR by 4 p.m. mountain time at the addresses specified in §1210.105. Reports received after 4 p.m. mountain time are considered received the following business day.	Burden hours covered under 1210.104(a) and (b).		

30 CFR Part 1210	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
1210.104 (a), (b), and (c)	**1210.104 Must I submit these production reports electronically?** (a) You must submit Forms MMS–4054 and MMS–4058 electronically unless you qualify for an exception under §1210.105. (b) You must use one of the following electronic media types, unless ONRR instructs you differently * * * (c) Refer to our electronic reporting guidelines in the ONRR *Minerals Production Reporter Handbook*, for the most current reporting options, instructions, and security measures. The handbook may be found on our Internet Web site or you may call your ONRR customer service representative * * * * * * * *	**Form MMS-4054 (OGOR)**		
		Electronic* (approximately 99 percent)		
		1 min.	5,688,962	94,816
		Manual* (approximately 1 percent)		
		3 min.	57,464	2,873
		TOTAL OGOR	**5,746,426**	**97,689**
		Form MMS-4058 (PASR)		
		Electronic* (approximately 99 percent)		
		1 min.	17,820	298
		Manual* (approximately 1 percent)		
		3 min.	180	9
		TOTAL PASR	**18,000**	**307**
Subpart D—Special-Purpose Forms and Reports—Oil, Gas, and Geothermal Resources				
1210.155	**1210.155 What reports must I submit for Federal onshore stripper oil properties?** (a) *General.* Operators who have been granted a reduced royalty rate by the Bureau of Land Management (BLM) under 43 CFR 3103.4–2 must submit Form MMS–4377, Stripper Royalty Rate Reduction Notification, under 43 CFR 3103.4–2(b)(3). * * * * *	Burden covered under OMB Control Number 1012-0005.		
SUBTOTAL FOR PRODUCTION REPORTING			**5,764,426**	**97,996**
PART 1212—RECORDS AND FILES MAINTENANCE				
Subpart B—Oil, Gas and OCS Sulphur—General				

30 CFR Part 1210	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses	Annual Burden Hours
1212.50	**1212.50 Required recordkeeping and reports.** All records pertaining to offshore and onshore Federal and Indian oil and gas leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, that records must be maintained for a longer period * * *. **[In accordance with 30 U.S.C. 1724(f), Federal oil and gas records must be maintained for 7 years from the date the obligation became due.]**	Burden hours covered under 1210.54(a), (b), and (c); and 1210.104(a) and (b).		
1212.51 (a) and (b)	(a) *Records.* Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, net profit shares, and other payments related to offshore and onshore Federal and Indian oil and gas leases are in compliance with lease terms, regulations, and orders * * *. (b) Period for keeping records. Lessees, operators, revenue payors, or other persons required to keep records under this section shall maintain and preserve them for 6 years from the day on which the relevant transaction recorded occurred unless the Secretary notifies the record holder of an audit or investigation involving the records and that they must be maintained for a longer period * * *. **[In accordance with 30 U.S.C. 1724(f), Federal oil and gas records must be maintained for 7 years from the date the obligation became due.]**	Burden hours covered under 1210.54(a), (b), and (c); and 1210.104(a) and (b).		
TOTAL FOR ROYALTY AND PRODUCTION REPORTING			**10,499,998**	**337,933**

***Note:** ONRR consider each line of data as one response/report.

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have not identified a ''non-hour'' cost burden associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.)* provides that 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.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency to ''* * * provide 60-day notice in the **Federal Register** * * * 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 proposed collection of information is necessary for the agency to perform its

duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have 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. You should describe the methods that you use to estimate (1) major cost factors, including system and technology acquisition, (2) expected useful life of capital equipment, (3) discount rate(s), and (4) the period over which you incur costs. Capital and startup costs include, among other items, computers and software that you purchase to prepare for collecting information and monitoring, sampling, and testing equipment, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Federal Government; or (iv) as part of customary and usual business, or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you, without charge, upon request. We also will post the ICR at *http://www.onrr.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments, including names and addresses of respondents, at *http://www.regulations.gov.* Before including your address, phone number, email address, or other personal identifying information in your comment, be advised 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 from public view your personal identifying information, we cannot guarantee that we will be able to do so.

Office of the Secretary, Information Collection Clearance Officer: Laura Dorey (202) 208–2654.

Dated: March 23, 2012.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2012–7786 Filed 3–30–12; 8:45 am]

BILLING CODE 4310–T2–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–709 (Third Review)]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Germany; Institution of a Five-Year Review of the Antidumping Duty Order

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on certain seamless carbon and alloy steel standard, line, and pressure pipe (''seamless pipe'') from Germany would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is May 2, 2012. Comments on the adequacy of responses may be filed with the Commission by June 15, 2012. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 3, 1995, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of seamless pipe from Germany (60 FR 39704). Following the first five-year reviews by Commerce and the Commission, effective July 16, 2001, Commerce issued a continuation of the antidumping duty order on imports of seamless pipe from Germany (66 FR 37004). Following the second five-year reviews by Commerce and the Commission, effective May 18, 2007, Commerce issued a continuation of the antidumping duty order on imports of seamless pipe from Germany (72 FR 28026). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Germany.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its full first and second five-year review determinations, the Commission found one *Domestic Like Product* consisting of seamless carbon and alloy steel standard, line,

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 12–5–268, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

and pressure pipe and tube not more than 4.5 inches in outside diameter, and including redraw hollows.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and full first and second five-year review determinations, the Commission defined the Domestic Industry as producers of seamless carbon and alloy steel standard, line, and pressure pipe and tube not more than 4.5 inches in outside diameter, including redraw hollows.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission=s rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the Asame particular matter@ as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission=s rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission=s rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter=s knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 2, 2012. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 15, 2012. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided In Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of

imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the Subject Country that currently export or have exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm=s operations on that product during calendar year 2011, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product and Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 27, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–7800 Filed 3–30–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–921 (Second Review)]

Folding Gift Boxes From China; Institution of a Five-Year Review of the Antidumping Duty Order

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on folding gift boxes from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is May 2, 2012. Comments on the adequacy of responses may be filed with the Commission by June 15, 2012. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.— On January 8, 2002, the Department of Commerce issued an antidumping duty order on imports of folding gift boxes from China (67 FR 864). Following the first five-year reviews by Commerce and the Commission, effective May 18, 2007, Commerce issued a continuation of the antidumping duty order on imports of folding gift boxes from China (72 FR 28025). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Like Product* as certain folding gift boxes for resale, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of certain folding gift boxes for resale.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 12–5–267, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 2, 2012. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 15, 2012. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission=s rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm=s operations on that product during calendar year 2011, except as noted (report quantity data in pieces and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) Net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in pieces and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports

and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in pieces and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission=s rules.

By order of the Commission.

Issued: March 27, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–7794 Filed 3–30–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Filing of Consent Decree Pursuant to the Clean Air Act, CERCLA and EPCRA

Notice is hereby given that on March 26, 2012, a proposed Consent Decree in *United States and State of Kansas* v. *National Cooperative Refinery Association,* No. 6:12-cv-01110–EFM–JPO, was filed with the United States District Court for the District of Kansas. The Consent Decree settles the claims of the United States' and the State of Kansas set forth in the complaint for civil penalties and injunctive relief against the National Cooperative Refinery Association relating to its refinery in McPherson, Kansas, and its related storage facility in Conway, Kansas, based on violations of the refinery's Clean Air Act Title V permit, the CAA's New Source Performance Standards (NSPS), and Risk Management Plan regulations, and CERCLA and EPCRA release notification requirements. Under the terms of the Consent Decree NCRA shall pay $700,000 in penalty, spend approximately $730,000 in performing Supplemental Environmental Projects and implement injunctive relief directed primarily at insuring future compliance with the Risk Management Program requirements for these facilities. $225,000 of this penalty will be paid to the State of Kansas.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the 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 Kansas* v. *National Cooperative Refinery Association,* No. 6:12-cv-01110–EFM–JPO (D. Kansas), Department of Justice Case Number 90–5–1–1–06025/3.

During the public comment period, the Consent Decree may be examined at the Office of the United States Attorney, District of Kansas, 301 North Main St. Wichita, Kansas, 67212. The Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*eescdcopy.enrd@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $22.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief.

[FR Doc. 2012–7714 Filed 3–30–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application Meridian Medical Technologies

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for

the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on January 4, 2012, Meridian Medical Technologies, 2555 Hermelin Drive, St. Louis, Missouri 63144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Morphine (9300), a basic class of controlled substance listed in schedule II.

The company manufactures a product containing morphine in the United States. The company exports this product to customers around the world, including in Europe. The company has been asked to ensure that its product sold to European customers meets standards established by the European Pharmacopeia, which is administered by the Directorate for the Quality of Medicines (EDQM). In order to ensure that its product will meet European specifications, the company seeks to import morphine supplied by EDQM to use as reference standards. This is the sole purpose for which the company will be authorized by DEA to import morphine.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than May 2, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: March 23, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–7755 Filed 3–30–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration Mallinckrodt LLC

By Notice dated January 23, 2012, and published in the **Federal Register** on January 31, 2012, 77 FR 4831, Mallinckrodt LLC, 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for distribution to its customers, and for research and analytical standards.

The company has withdrawn its application for registration to import the following drug codes: Methylphenidate (1724), Oxycodone (9143), Hydromorphone (9150), Hydrocodone (9193), Morphine (9300), and Fentanyl (9801).

Comments and requests for hearings on applications to import narcotic raw material are not appropriate, 72 FR 3417 (2007). Regarding all other basic classes of controlled substances, no comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Mallinckrodt LLC, to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Mallinckrodt LLC to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: March 23, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–7758 Filed 3–30–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Cerilliant Corporation

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 17, 2012, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
4-methyl-N-methylcathinone (1248).	I
3,4-methylenedioxypyrovalerone (7535).	I
3,4-methylenedioxy-N-methylcathinone (7540).	I
Desomorphine (9055)	I

The company plans to manufacture small quantities of the listed controlled substances to make reference standards which will be distributed to their customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 1, 2012.

Dated: March 23, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–7759 Filed 3–30–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration, Norac Inc.

By Notice dated December 20, 2011, and published in the **Federal Register** on December 29, 2011, 76 FR 81979, Norac Inc., 405 S. Motor Avenue, Azusa, California 91702–3232, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Tetrahydrocannabinols (7370)	I
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Nabilone (7379)	II

With regard to Gamma Hydroxybutyric Acid (2010), Tetrahydrocannabinols (7370), and Methamphetamine (1105) only, the company manufactures these controlled substances in bulk solely for domestic distribution within the United States to customers engaged in dosage-form manufacturing.

With regard to Nabilone (7379) only, the company presently manufactures a small amount of this controlled substance in bulk solely to conduct manufacturing internal process development. It is the company's intention once the manufacturing process is refined to the point that its Nabilone bulk product is available for commercial use, the company will export the controlled substance in bulk solely to customers engaged in dosage-form manufacturing outside the United States. The company is aware of the requirement to obtain a DEA registration as an exporter to conduct this activity.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Norac, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Norac, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 USC § 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: March 23, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–7750 Filed 3–30–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,045]

Dow Jones & Company, Inc., Dow Jones Content Services Including On-Site Workers From Aerotek, Inc., Princeton, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 26, 2012, applicable to workers of Aerotek, Inc., working on-site at Dow Jones Corporation, Dow Jones Content Services Princeton, New Jersey. The workers are engaged in activities related to the production of digital newsletters. The notice was published in the **Federal Register** on February 8, 2012 (77 FR 6590).

At the request of the New Jersey State agency, the Department reviewed the certification for workers of the subject firm. New information shows that workers of the Princeton, New Jersey location of Dow Jones & Company, Dow Jones Content Services, including on-site workers from Aerotek were engaged in activities supporting the production of digital newsletters, both experienced worker separations during the relevant time period due to the shift in the production of digital newsletters to Sophia, Bulgaria.

Accordingly, the Department is amending the certification to include workers of the Princeton, New Jersey location of Dow Jones & Company, Inc., Dow Jones Content Services.

The amended notice applicable to TA–W–81,045 is hereby issued as follows:

All workers from Dow Jones & Company, Inc., Dow Jones Content Services, including on-site workers from Aerotek, Princeton, New Jersey, who became totally or partially separated from employment on or after February 13, 2010, through January 26, 2014, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1074, as amended.

Signed at Washington, DC, this 22nd day of March 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–7795 Filed 3–30–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,038]

Ford Motor Company Twin Cities Assembly Plant Vehicle Operations Division Including On-Site Leased Workers From AEROTEK, Albers Mechanical, Alliedbarton, Allied Systems Aristeo, Autoport Collins Electric, Guardsmark, Great Western Recycling, Healthsource Solutiions, Kelly Services, Marsden Building Maintenance, Penski Logistics Ppg Industries, Waste Management, VMX, Nascote Industries, Delphi Electronics & Safety, Unicomm, And Pacer International St. Paul, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 9, 2012, applicable to workers of Ford Motor Company, Twin Cities Assembly Plant, Vehicle Operations Division, St. Paul, Minnesota. The workers are engaged in activities related to the production of pickup trucks. The notice was published in the **Federal Register** on February 28, 2012 (77 FR 12083).

At the request of the Minnesota State agency, the Department reviewed the certification for workers of the subject firm. New information from the

company shows that workers leased from Aerotek, Albers Mechanical, Alliedbarton, Allied Systems, Aristeo, Autoport, Collins Electric Guardsmark, Great Western Recycling, Healthsource Solution, Kelly Services, Marsden Building Maintenance, Penski Logistics, PPG Industries, Waste Management, VMX, Nascote Industries, Delphi Electronics & Safety, Unicomm, and Pacer International were employed on-site at the St. Paul, Minnesota location of Ford Motor Company, Twin Cities Assembly Plant, Vehicle Operations Division. The Department has determined that these workers were sufficiently under the control of Ford Motor Company, Twin Cities Assembly Plant, Vehicle Operations Division, St. Paul, Minnesota to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from the above mentioned firms working on-site at the St. Paul, Minnesota location of the subject firm.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production of pickup trucks to Thailand, Brazil, and South Africa.

The amended notice applicable to TA–W–81,038 is hereby issued as follows:

All workers from Ford Motor Company, Twin Cities Assembly Plant, Vehicle Operations Division, St. Paul, Minnesota, including on-site leased workers from Aerotek, Albers Mechanical, Alliedbarton, Allied Systems, Aristeo, Autoport, Collins Electric, Guardsmark, Great Western Recycling Healthsource Solutions, Kelly Services Marsden Building Maintenance, Penski Logistics, PPG Industries, Waste Management, VMX, Nascote Industries, Delphi Electronics & Safety, Unicomm, and Pacer International, St. Paul, Minnesota, who became totally or partially separated from employment on or after February 13, 2010, through February 9, 2014, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1074, as amended.

Signed at Washington, DC, this 23rd day of March 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–7799 Filed 3–30–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,593]

Whirlpool Corporation Including On-Site Leased Workers From Career Solutions TEC Staffing, IBM Corporation, TEK Systems Penske Logistics, Eurest, Canteen, Kelly Services, Inc., Prodriver, Arkansas Warehouse, Inc., Andrews International Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through U.S. Security Fort Smith, AR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 6, 2010, applicable to workers of Whirlpool Corporation, including on-site leased workers from Career Solutions TEC Staffing, Fort Smith, Arkansas. The workers are engaged in the production of refrigerators and trash compactors. The notice was published in the **Federal Register** on October 25, 2010 (75 FR 65520). The notice was amended on December 6, 2010, November 7, 2011 and November 18, 2011 to include several on-site leased worker firms. The notices were published in the **Federal Register** on December 13, 2010 (75 FR 77665), November 28, 2011 (76 FR 72978) and November 29, 2011(76 FR 73683–73684), respectively.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that workers leased from Andrews International employed on-site at the Fort Smith, Arkansas location of Whirlpool Corporation had their wages reported through a separate unemployment insurance (UI) tax account under the name U.S. Security.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in the production of refrigerators and trash compactors to Mexico.

The amended notice applicable to TA–W–74,593 is hereby issued as follows:

All workers of Whirlpool Corporation, including on-site leased workers from Career Solutions TEC Staffing, IBM Corporation, TEK Systems, Penske Logistics, Eurest, Canteen, Kelly Services, Inc., Prodriver, Arkansas Warehouse, Inc., and Andrews International, including workers whose unemployment insurance (UI) wages are reported through U.S. Security, Fort Smith, Arkansas, who became totally or partially separated from employment on or after October 2, 2010, through October 6, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Dated: Signed at Washington, DC, this 23rd day of March 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–7798 Filed 3–30–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations 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) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *March 12, 2012 through March 16, 2012.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either-

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1- year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
81,143	Armstrong Hardwood Flooring Company, Armstrong Woods Products, Inc., Armstrong World Industries, Inc..	Beverly, WV	January 24, 2011.
81,343	Adcom Wire Company, Leggett & Platt, Inc.	Nicholasville, KY	February 16, 2011.
81,350	Fashion Ability Inc.	New York, NY	February 19, 2011.
81,352	Simclar, Inc., Ohio (Dayton) Division, Aerotek, Staffmark, and Office Team.	Dayton, OH	February 17, 2011.
81,366	Sunrise Wood Products, Lumber Products, Aerotek	Spokane Valley, WA	February 23, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
81,127	Western Union, OV/VIGO Accounting Team, Compliance Division, Ops. Division, 360 Degrees.	Englewood, CO	February 13, 2010.
81,157	AAA Northern California, Nevada & Utah Insurance Exchange, Finance Division.	Fairfield, CA	February 13, 2010.
81,217	Elliott Homes, Inc., Solitaire Holdings, LLC	Madill, OK	February 13, 2010.
81,262	Thermadyne Industries, Inc., Information Technology Helpdesk	Denton, TX	January 23, 2011.
81,285	The Aftermarket Group, TAG (West) Division, Invacare Corporation.	Sacramento, CA	January 30, 2011.
81,319	TE Connectivity, Datacomm Division	Middletown, PA	February 9, 2011.
81,340	The Berry Company, LLC, TBD Holdings I, Inc.	Dayton, OH	October 2, 2011.
81,347	SenoRX, Bard Biopsy Systems, Wages Reported under Bard Biopsy Sys., Select Staffing.	Irvine, CA	February 16, 2011.
81,356	The W.E. Bassett Company, Pacific World, Monroe Staff, Coworx, Jace, Hamilton, Nesco.	Shelton, CT	February 8, 2011.
81,359	Codi Inc.	Tower City, PA	February 22, 2011.
81,361	The State Journal-Register, GateHouse Media Illinois Holdings II, Creative Services Department.	Springfield, IL	February 17, 2011.
81,362	Prairie Mountain Publishing, Medianews Group Daily Camera, Advertising Layout & Design Gp, Lehman Commun.	Boulder, CO	February 23, 2011.
81,377	Allied Motion Motor Products, Owosso Technology Unit	Owosso, MI	February 21, 2011.
81,399	Gerber Scientific, Inc., Information Technology (IT) Department	Tolland, CT	March 5, 2011.
81,402	Conesys	Torrance, CA	February 20, 2011.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
81,130	Superior Plating, Inc., Spectrum Staffing and Platinum Staffing	Minneapolis, MN	February 13, 2010.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W number	Subject firm	Location	Impact date
81,190	Graphic Packaging International, Consumer Packaging Division	Lawrenceburg, TN	
81,351	Truseal Technologies, Inc., Quanex Building Products Corporation	Barbourville, KY	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W number	Subject firm	Location	Impact date
81,259	MISA Metal Blanking, Inc., Marubeni Itochu Steel America, Express Employment Professionals.	Howell, MI	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was 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), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W number	Subject firm	Location	Impact date
81,327	Diversified Machine, Inc.	Howell, MI	

I hereby certify that the aforementioned determinations were issued during the period of *March 12, 2012 through March 16, 2012.* These determinations are available on the Department's Web site *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: March 22, 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–7797 Filed 3–30–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 12, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 12, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC, 20210.

Signed at Washington, DC, this 23rd day of March 2012.

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[19 TAA petitions instituted between 3/12/12 and 3/16/12]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
81407	GC Services (Workers)	El Paso, TX	03/12/12	03/09/12
81408	Syngenta Crop Protection LLC (Workers)	Grensboro, NC	03/12/12	03/12/12
81409	OnBoard Research Corporation (Company)	Carrollton, TX	03/12/12	03/09/12
81410	Auto Valve (State/One-Stop)	El Paso, TX	03/12/12	03/09/12
81411	Franklin Building Material (State/One-Stop)	El Paso, TX	03/13/12	03/08/12
81412	Kraft Foods Global, Inc. (State/One-Stop)	Coshocton, OH	03/13/12	03/12/12
81413	Merck Pharmaceuticals (State/One-Stop)	Kenilworth, NJ	03/13/12	03/12/12
81414	TE Connectivity (Workers)	Jonestown, PA	03/14/12	03/06/12
81415	Covidien (Workers)	Mansfield, MA	03/14/12	03/13/12
81416	Tango Transport/GMGO (Company)	Shreveport, LA	03/14/12	03/13/12
81417	Nilfisk-Advance Incorporated (State/One-Stop)	Plymouth, MN	03/14/12	03/07/12
81418	Fortis Plastics LLC (Company)	Wilmington, OH	03/14/12	03/14/12
81419	Panduit Corp. (Company)	New Lenox, IL	03/14/12	02/21/12
81420	PepsiCo (Workers)	Plano, TX	03/15/12	03/14/12
81421	Avaya, Inc. (Union)	Westminster, CO	03/15/12	03/14/12
81422	Thermo Fisher Scientific Milwaukee LLC (Company)	Milwaukee, WI	03/16/12	03/14/12
81423	Sony Electronics, Inc. (Company)	San Diego, CA	03/16/12	03/15/12
81424	VF Americas Sourcing (Company)	Plantation, FL	03/16/12	03/14/12
81425	Becromal of America, Inc. (Company)	Clinton, TN	03/16/12	03/15/12

[FR Doc. 2012–7796 Filed 3–30–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before May 2, 2012.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail:* zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations, and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Individuals who submit comments by hand-delivery are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or

proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Numbers: M–2012–030–C.

Petitioner: Rhino Eastern, LLC, P.O. Box 260, Bolt, West Virginia 25817.

Mines: Eagle No. 2 Mine, MSHA I.D. No. 46–09201; 600 Glen Rogers Ravencliff Road, Glen Rogers, West Virginia 25817, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to eliminate the use of blow-off dust covers for the spray nozzles of a deluge-type water spray system. The petitioner states that:

(1) Inspection and functional testing of the complete deluge-type water spray system are conducted weekly.

(2) Currently, each spray nozzle is provided with blow-off dust covers.

(3) In view of frequent inspections and functional testing of the system, the dust covers are not necessary because the nozzles can be maintained in an unclogged condition through weekly use. The proposed modification will eliminate the potential hazard of reaching across or removing guarding to replace the caps.

(4) It is burdensome to remove blow-off dust covers from the nozzles and recap the large number of covers on a weekly basis after each inspection and functional test. The petitioner proposes to remove the covers and conduct weekly inspection and functional testing of the complete deluge-type water spray system.

The petitioner asserts that the alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the existing standard.

Docket Numbers: M–2012–031–C.

Petitioner: White Oak Resources, LLC, 121 S. Jackson Street, P.O. Box 339, McLeansboro, Illinois 62859.

Mines: White Oak Mine No. 1, MSHA I.D. No. 11–03203, 121 S. Jackson Street, P.O. Box 339, McLeansboro, Illinois 62859, located in Hamilton County, Illinois.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of a motor grader equipped with an OEM braking system with design features and operating procedures that will provide the same measure of protection as the existing standard for the Getman Roadbuilder (motor grader), Model RDG–1540C, Serial Number 460–004. The petitioner states that:

(1) The use of motor graders has contributed to the maintenance of safe travelways, including escapeways, and has been a contributing factor to the safe operation of underground mines.

(2) Enforcement of this regulation, on this particular machine, prohibits its use and will adversely affect the ability to maintain underground roadways in a safe condition.

(3) As designed and built, this machine has four drive wheels (rear) and two front (steering) wheels. There are dual brake systems on the four rear wheels and no braking system on the front wheels. Approximately 74 percent of the total machine weight is over the four rear wheels.

(4) The weight distribution assures that the brakes on the rear wheels of the motor grader are sufficient to safely stop the machine.

(5) The proposed alternative method may even provide a greater degree of safety in certain in-mine conditions. Various roadway maintenance products are frequently needed to provide a roadway free of wet, muddy conditions that affect safe steering and braking functions. Rock and gravel are frequently used in these conditions. The application of a front braking system may cause the motor grader to skid on the previously applied gravel, especially on grades, and compromise steering.

(6) The rear wheels will travel over a more uniform floor as they are positioned behind the lowered moldboard and braking would occur on a superior floor condition.

(7) The front axle is subject to numerous directional forces from the axle oscillation, wheel steering that can range up to 50 degrees both left and right as well as the wheels leaning up to 18 degrees making the application of brakes on these wheels impracticable and potentially counterproductive. The petitioner proposes the following alternative method:

(a) The maximum speeds of the grader will be less than 10 miles per hour (mph) both forward and reverse by permanently blocking out any gear or gear ratio that provides higher speeds or by using transmission(s) and differential(s) geared in accordance with the manufacturer that limits the maximum speed to 10 mph.

(b) The motor grader/road builder will comply with all other design and safety performance requirements contained in 30 CFR 75.1909 and 75.1910.

(c) Grader operators will be trained to lower the moldboard, the component that performs the grading function, to provide additional stopping capability in emergency situations. This training will be documented on MSHA Form 5000–23.

(d) Items (a) and (c) of the alternative method above will be included in the initial and refresher training required in 30 CFR Part 48.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Numbers: M–2012–032–C, M–2012–033–C, and M–2012–034–C.

Petitioner: Midland Trail Energy, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mines: Blue Creek No. 1 Mine, MSHA I.D. No. 46–09297, Docket No. M–2012–032–C; Blue Creek No. 2 Mine, MSHA I.D. No. 46–09296, Docket No. M–2012–033–C; and Campbells Creek No. 7 Mine, MSHA I.D. No. 46–09107, Docket No. M–2012–034–C; 3301 Point Lick Road, Charleston, West Virginia 25306, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible

surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Numbers: M–2012–035–C, M–2012–036–C, and M–2012–037–C.

Petitioner: Midland Trail Energy, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mines: Blue Creek No. 1 Mine, MSHA I.D. No. 46–09297, Docket No. M–2012–035–C; Blue Creek No. 2 Mine, MSHA I.D. No. 46–09296, Docket No. M–2012–036–C; and Campbells Creek No. 7 Mine, MSHA I.D. No. 46–09107, Docket No. M–2012–037–C; 3301 Point Lick Road, Charleston, West Virginia 25306, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Numbers: M–2012–038–C, M–2012–039–C, and M–2012–040–C.

Petitioner: Midland Trail Energy, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mines: Blue Creek No. 1 Mine, MSHA I.D. No. 46–09297, Docket No. M–2012–038–C; Blue Creek No. 2 Mine, MSHA I.D. No. 46–09296, Docket No. M–2012–039–C; and Campbells Creek No. 7 Mine, MSHA I.D. No. 46–09107, Docket No. M–2012–040–C, 3301 Point Lick Road, Charleston, West Virginia 25306, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Numbers: M–2012–041–C and M–2012–042–C.

Petitioner: Speed Mining, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mines: Coon Hollow Tunnel Mine, MSHA I.D. No. 46–09099, Docket No. M–2012–041–C; and American Eagle Mine, MSHA I.D. No. 46–05437, Docket No. M–2012–042–C; 200 Remington Coal Lane, Coal Fork Hollow, Cabin Creek, West Virginia 25035, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) ((Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of

the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Numbers: M–2012–043–C and M–2012–044–C.

Petitioner: Speed Mining, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mines: Coon Hollow Tunnel Mine, MSHA I.D. No. 46–09099, Docket No. M–2012–043–C; and American Eagle Mine, MSHA I.D. No. 46–05437, Docket No. M–2012–044–C; 200 Remington Coal Lane, Coal Fork Hollow, Cabin Creek, West Virginia 25035, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard: (a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of

nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Numbers: M–2012–045–C and M–2012–046–C.

Petitioner: Speed Mining, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mines: Coon Hollow Tunnel Mine, MSHA I.D. No. 46–09099, Docket No. M–2012–045–C; and American Eagle Mine, MSHA I.D. No. 46–05437, Docket No. M–2012–046–C; 200 Remington Coal Lane, Coal Fork Hollow, Cabin Creek, West Virginia 25035, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372, and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines it is necessary to determine the exact location and extents of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard: (a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–047–C.

Petitioner: Dodge Hill Mining Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Dodge Hill No. 1 Mine, MSHA I.D. No. 15–18335, 435 Davis Mine Road, Sturgis, Kentucky 42459, located in Union County, Kentucky.

Regulation Affected: 30 CFR 75.500(d) ((Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) In order to comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–048–C.

Petitioner: Dodge Hill Mining Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Dodge Hill No. 1 Mine, MSHA I.D. No. 15–18335, 435 Davis Mine Road, Sturgis, Kentucky 42459, located in Union County, Kentucky.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard: (a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–049–C.

Petitioner: Dodge Hill Mining Company, LLC, Three Gateway Center,

Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Dodge Hill No. 1 Mine, MSHA I.D. No. 15–18335, 435 Davis Mine Road, Sturgis, Kentucky 42459, located in Union County, Kentucky.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372, and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines it is necessary to determine the exact location and extents of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–050–C.

Petitioner: Ohio County Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Freedom Mine, MSHA I.D. No. 15–17587, 19050 Hwy 1078 South, Henderson, Kentucky 42420, located in Henderson County, Kentucky.

Regulation Affected: 30 CFR 75.500(d) ((Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously

monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–051–C.

Petitioner: Ohio County Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Freedom Mine, MSHA I.D. No. 15–17587, 19050 Hwy 1078 South, Henderson, Kentucky 42420, located in Henderson County, Kentucky.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–052–C.

Petitioner: Ohio County Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Freedom Mine, MSHA I.D. No. 15–17587, 19050 Hwy 1078 South, Henderson, Kentucky 42420, located in Henderson County, Kentucky.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372, and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future

mines that may mine in close proximity to these same active mines it is necessary to determine the exact location and extents of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–053–C.

Petitioner: Remington, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Winchester Mine, MSHA I.D. No. 46–09230, 800 Toms Fork, Eskdale, West Virginia 25075, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) ((Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–054–C.

Petitioner: Remington, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Winchester Mine, MSHA I.D. No. 46–09230, 800 Toms Fork, Eskdale, West Virginia 25075, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–055–C.

Petitioner: Remington, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Winchester Mine, MSHA I.D. No. 46–09230, 800 Toms Fork, Eskdale, West Virginia 25075, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372, and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines it is necessary to determine the exact location and extents of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating

condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–056–C.

Petitioner: Sage Creek Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Peabody Sage Creek Mine, MSHA I.D. No. 05–04952, 29615 PCR 33, Oak Creek, Colorado 80467, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.500(d) ((Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–057–C.

Petitioner: Sage Creek Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Peabody Sage Creek Mine, MSHA I.D. No. 05–04952, 29615 PCR

33, Oak Creek, Colorado 80467, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–058–C.

Petitioner: Sage Creek Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Peabody Sage Creek Mine, MSHA I.D. No. 05–04952, 29615 PCR 33, Oak Creek, Colorado 80467, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372, and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines it is necessary to determine the exact location and extents of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard: (a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–059–C.

Petitioner: Eastern Associated Coal, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Matewan Tunnel Mine, MSHA I.D. No. 46–08610, HRC 78 Box 113, Wharton, West Virginia 25208, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) ((Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard: (a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–060–C.

Petitioner: Eastern Associated Coal, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Matewan Tunnel Mine, MSHA I.D. No. 46–08610, HRC 78 Box 113, Wharton, West Virginia 25208, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient

manner. The petitioner proposes the following as an alternative to the existing standard: (a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–061–C.

Petitioner: Eastern Associated Coal, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Matewan Tunnel Mine, MSHA I.D. No. 46–08610, HRC 78 Box 113, Wharton, West Virginia 25208, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) In order to comply with requirements of 30 CFR 75.372, 75.1002(a), and 75.1200, use of the most practical and accurate surveying equipment is necessary. In order to ensure the safety of the miners in active mines and to protect miners in future mines which may mine in close proximity to these same active mines it is necessary to determine the exact location and extents of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA upon request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries contained in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in

compliance with all the terms and conditions in this petition.

(j) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Dated: March 28, 2012.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2012–7789 Filed 3–30–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0009]

The Asbestos in Shipyards Standard; Extension of the Office of Management and Budget's Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Asbestos in Shipyards Standard (29 CFR 1915.1001).

DATES: Comments must be submitted (postmarked, sent, or received) by June 1, 2012.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0009, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2012–0009) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

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

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Asbestos in Shipyards Standard protect workers from the adverse health effects that may result from occupational exposure to asbestos. The major information collection requirements in the Standard include: Implementing an exposure monitoring program that informs workers of their exposure-monitoring results; at multi-employer worksites, when establishing regulated areas for the type of work performed with asbestos-containing materials (ACMs) and/or presumed asbestos-containing materials (PACMs), employers notifying other on-site employers of the requirements that pertain to regulated areas, and the measures the employers can use to protect their workers from asbestos overexposure; developing specific information and training programs for workers; providing medical surveillance for workers potentially exposed to ACMs and/or PACMs, including administering a worker medical questionnaire, providing information to the examining physician, and providing the physician's written opinion to the worker; and maintaining records of objective data used for exposure determinations, worker exposure monitoring and medical surveillance records, training records, the record (i.e., information, data, and analyses) used to demonstrate that PACMs do not contain asbestos, and notifications made and received by building/facility owners regarding the content of ACMs and PACMs.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing to extend the information collection requirements contained in the Asbestos in Shipyards Standard (29 CFR 1915.1001). The Agency is requesting a decrease in its current burden hour total from 1,623 hours to 1,613, for a total decrease of 10 hours. The adjustment is primarily the result of a decrease in the number of shipyards that may have employees exposed to asbestos. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Asbestos in Shipyards Standard (29 CFR 1915.1001).

OMB Control Number: 1218–0195.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes (.08 hour) to provide information to the examining physician to 1.83 hours to develop alternative control methods.

Estimated Total Burden Hours: 1,613.

Estimated Cost (Operation and Maintenance): $37,650.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0009). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on March 27, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–7737 Filed 3–30–12; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2013 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for proposals for the provision of civil legal services.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to low-income people.

LSC hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to eligible clients in the service area(s) of the states and territories identified below. The exact amount of congressionally appropriated funds and the date, terms, and conditions of their availability for calendar year 2013 have not been determined.

DATES: See **SUPPLEMENTARY INFORMATION** section for grants competition dates.

ADDRESSES: Legal Services Corporation—Competitive Grants, 3333 K Street NW., Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: Office of Program Performance by email at *competition@lsc.gov,* or visit the grants competition Web site at *www.grants.lsc.gov.*

SUPPLEMENTARY INFORMATION: The Request for Proposals (RFP) will be available the week of April 9, 2012. Applicants must file a Notice of Intent to Compete (NIC) to participate in the competitive grants process. Applicants must file the NIC by May 11, 2012, 5 p.m. E.D.T. Other key application and filing dates including the dates for filing grant applications are published at *www.grants.lsc.gov/resources/notices.*

LSC is seeking proposals from: (1) Non-profit organizations that have as a purpose the provision of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) state or local governments; and (5) sub-state regional planning and coordination agencies that are composed of sub-state areas and whose governing boards are controlled by locally elected officials.

The RFP, containing the NIC and grant application, guidelines, proposal content requirements, service area descriptions, and specific selection criteria, will be available from *www.grants.lsc.gov* the week of April 9, 2012. LSC will not fax the RFP to interested parties.

Below are the service areas for which LSC is requesting grant proposals. Service area descriptions will be available at *www.grants.lsc.gov/about-grants/where-we-fund.* LSC will post all updates and/or changes to this notice at *www.grants.lsc.gov.* Interested parties are asked to visit *www.grants.lsc.gov* regularly for updates on the LSC competitive grants process.

State	Service Area(s)
Alabama	AL–4.
American Samoa	AS–1.
Arizona	AZ–2, NAZ–5.
California	CA–2, CA–19, CA–26, CA–29, CA–30.
Colorado	CO–6, MCO, NCO–1.
Delaware	MDE.
Florida	FL–5, FL–13, FL–14,FL–15, FL–16, FL–17, FL–18, MFL.
Georgia	GA–1, GA–2, MGA.
Hawaii	HI–1, NHI–1.
Illinois	IL–6, MIL.
Indiana	IN–5, MIN.
Louisiana	LA–10, LA–11.
Maryland	MD–1, MMD.
Massachusetts	MA–4, MA–12.
Michigan	MI–14.
Mississippi	MS–9, NMS–1.
Montana	MT–1, MMT, NMT–1.
Nebraska	MNE.
New Mexico	NM–1, NNM–2.
New York	NY–7, NY–20, NY–21, NY–22, NY–23, NY–24, MNY.
North Carolina	NC–5, MNC, NNC–1.
Oklahoma	OK–3, MOK.
Pennsylvania	PA–1, PA–5, PA–8, PA–23, PA–26, MPA.
Puerto Rico	PR–1, MPR.
South Carolina	SC–8, MSC.

Dated: March 2, 2012.

Janet LaBella,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 2012–5737 Filed 3–30–12; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–023)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive, license in the United States to practice the invention described and claimed in US Patent Application No. 12/398,854; NASA Case No. ARC–16298–1 entitled ''Carbon Nanotube Tower-Based Supercapacitor,'' to Ultora, Inc., having its principal place of business at 238 E. Caribbean Drive Sunnyvale, CA 94089. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; Fax (650) 604–2767.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Chief Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; Fax (650) 604–2767. Information about other NASA inventions available for licensing can be found online at *http://www.nasa.gov/offices/ipp/centers/arc/home/index.html*

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2012–7818 Filed 3–30–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–024]

Notice of Intent to Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Partially Exclusive License

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the inventions described and claimed in MFS–32809–1 Adaptable Transponder for Multiple Telemetry Systems, U.S. Application Serial No. 13/369,704 and MFS–32841–1 System for Configuring Modular Telemetry Transponders, U.S. Application Serial No. 13/424,754, to Weddendorf Design, Inc. (DBA Orbital Telemetry), having its principal place of business in Huntsville, AL. The fields of use may be limited to suborbital and orbital aviation and aerospace applications. The patent rights in these inventions as applicable have been assigned to the United States of America as represented by the

Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive [or partially exclusive if applicable] license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–0013.

FOR FURTHER INFORMATION CONTACT: Mr. Sammy A. Nabors, Technology Transfer Office/ZP30, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2012–7817 Filed 3–30–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL LABOR RELATIONS BOARD

Notice of Sunshine Act Meetings; Sunshine Act Meetings for April 2012

TIME AND DATES: All meetings are held at 2:30 p.m.

Tuesday, April 3;
Wednesday, April 4;
Thursday, April 5;
Tuesday, April 10;
Wednesday, April 11;
Thursday, April 12;
Tuesday, April 17;
Wednesday, April 18;
Thursday, April 19;
Tuesday, April 24;
Wednesday, April 25;
Thursday, April 26.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Executive Secretary, (202) 273–1067.

Dated: March 29, 2012.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2012–7924 Filed 3–29–12; 11:15 am]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Biological Sciences Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L., 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Biological Sciences Advisory Committee (#1110).

Date and Time: April 26, 2011; 1 p.m. to 3 p.m.

Place: This meeting will be held by teleconference at the National Science Foundation, 1401 Wilson Blvd., Room 688, Arlington, VA 22230.

All visitors must contact the Directorate of Biological Sciences [call 703–292–8400 or send an email message to *erchiang@nsf.gov*] at least 24 hours prior to the teleconference to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

Type of Meeting: Open.

For Further Information Contact: Charles Liarakos, National Science Foundation, Room 605, 4201 Wilson Boulevard, Arlington, VA 22230 Tel No.: (703) 292–8400.

Purpose of Meeting: The Advisory Committee for the Directorate for Biological Sciences provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up of the Directorate for Biological Sciences.

Agenda: Items on the agenda include a briefing of the BIO FY13 budget request, and discussions on data management and broadening participation issues in biological sciences.

Dated: March 27, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–7761 Filed 3–30–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0249]

Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing a revision to Regulatory Guide (RG) 1.82, ''Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident.'' RG 1.82 describes methods that the NRC staff considers acceptable to implement requirements regarding the sumps and suppression pools that provide water sources for emergency core cooling, containment heat removal, or containment atmosphere cleanup systems. RG 1.82 provides guidelines for evaluating the adequacy and the availability of the sump or suppression pool for long-term recirculation cooling following a loss-of-coolant accident.

ADDRESSES: Please refer to Docket ID NRC–2010–0249 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0249. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Revision 4 of Regulatory Guide 1.82 is available

in ADAMS under Accession No. ML111330278. The regulatory analysis may be found in ADAMS under Accession No. ML111330285.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Burke, Mechanical and Electrical Engineering Branch or Richard Jervey, Regulatory Guide Development Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7628 and (301) 251–7404 or email: *John.Burke@nrc.gov* and *Richard.Jervey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 4 of Regulatory Guide (RG) 1.82, ''Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident,'' was issued with a temporary identification as Draft Regulatory Guide, DG–1234. RG 1.82 describes methods that the NRC staff considers acceptable to implement requirements regarding the sumps and suppression pools that provide water sources for emergency core cooling, containment heat removal, or containment atmosphere cleanup systems. RG 1.82 provides guidelines for evaluating the adequacy and the availability of the sump or suppression pool for long-term recirculation cooling following a loss-of-coolant accident.

II. Further Information

DG–1234 was published in the **Federal Register** on July 15 2010, (75 FR 41241) for a 60-day public comment period. The public comment period closed on September 10, 2010. RG. 1.82, was first issued in June 1974. The NRC issued revisions to RG 1.82 in November 1985, May 1996, and November 2003 to incorporate gains in the understanding of containment sump performance, particularly debris blockage on the Emergency Core Cooling System (ECCS) strainers, and provide guidance in determining net positive suction head margin for the ECCS and the containment heat removal system. Since the November 2003 revision, (Revision 3), was issued supplemental information has been accumulated pertaining to ECCS performance accounting for in-plant considerations such as generation of debris and chemical effects associated with the debris circulating in the ECCS systems. Additionally, the NRC issued GL 2008–01, ''Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems,'' in January 2008, to address gas accumulation in safety systems. The NRC obtained significant testing and analysis methodology information relative to pump characteristics affected by fluid voiding and gas transport as a function of system flow conditions which are germane to RG 1.82. This revision of RG 1.82 includes the latest information, and incorporates revised staff regulatory positions reflected in several safety evaluations performed upon ECCS performance testing results since the RG 1.82 Revision 3 was issued. Public comments on DG–1234 and the staff responses to the public comments are available in ADAMS under Accession No. ML111330292.

Dated at Rockville, Maryland, this 16th day of March 2012.

For the Nuclear Regulatory Commission.

Richard A. Jervey,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–7805 Filed 3–30–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66665; File No. SR–CBOE–2012–029]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

March 27, 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 March 26, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''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 CBOE Stock Exchange (''CBSX'') Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to amend its Maker fees for transactions in securities priced $1 or greater to further institute a tiered fee structure through which Makers who transact more business on CBSX will pay lower transaction fees. Currently, the Maker fee for transactions in securities priced $1 or greater executed by a market participant that adds two million or more shares of liquidity that day is $0.0016 per share,[3] and the Maker fee for transactions in securities priced $1 or greater executed by a market participant that does not add two million or more shares of liquidity that day is $0.0018 per share. CBSX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This rate applies to all transactions in securities priced $1 or greater made by the same market participant in any day in which such participant adds two million shares or more of liquidity. Market participants who share a trading acronym or MPID may aggregate their trading activity for purposes of this rate. Qualification for this rate will require that a market participant appropriately indicate his trading acronym and/or MPID in the appropriate field on the order.

proposes to amend this tiered system regarding Maker fees for transactions in securities priced $1 or greater in the following manner:

Maker (adds 15 million shares or more of liquidity in one day) $0.0013 per share

Maker (adds 10,000,000–14,999,999 shares of liquidity in one day) $0.0014 per share

Maker (adds 5,000,000–9,999,999 shares of liquidity in one day) $0.0015 per share

Maker (adds 2,500,000–4,999,999 shares of liquidity in one day) $0.0016 per share

Maker (adds 2,499,999 shares or less of liquidity in one day) $0.0018 per share

As with the current $0.0016 per share Maker fee for transactions in securities priced $1 or greater executed by a market participant that adds two million or more shares of liquidity that day, these rates apply to all transactions in securities priced $1 or greater made by the same market participant in any day in which such participant adds the established amount of shares or more of liquidity that is determined in the chart above for each tier. Market participants who share a trading acronym or MPID may aggregate their trading activity for purposes of these rates. Qualification for these rates will require that a market participant appropriately indicate his trading acronym and/or MPID in the appropriate field on the order. CBSX will promulgate an information circular to direct market participants on how to accurately qualify and aggregate their trading activity in order to receive this reduced rate.

The structure of decreasing Maker fees for transactions in securities priced at $1 or greater for adding increasing amounts of liquidity is designed to encourage increased trading activity and liquidity on CBSX. The Exchange desires to incentivize market participants who may be able to meet higher thresholds to add more volume and liquidity to the CBSX marketplace. This increased volume and liquidity would benefit all CBSX market participants, including those who do not trade at the higher levels, by providing them with more opportunities for execution. The thresholds are applied on a daily basis in order to encourage market participants to add volume and liquidity on a consistent basis. The Exchange seeks market participants who will be active on CBSX on a regular basis, as the liquidity that such larger-volume participants provide will be attractive to all investors and benefit all market participants. The thresholds in the different tier levels were set based on an analysis of current trading activity and an aspirational intention to encourage trading at those higher levels (the higher tiers of which are not currently being reached by any specific market participant).

The proposed change is intended to take effect on April 1, 2012.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4)[5] 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. The proposed Maker fee amounts are reasonable because they are lower than current CBSX fees for such transactions. The proposed Maker fees and tiers are equitable and not unfairly discriminatory because they will apply to all market participants, and all market participants will have the opportunity to qualify for the reduced rate tiers.

Further, the reduced fee tiers are equitable and not unfairly discriminatory because they will encourage market participants to trade on CBSX and bring greater liquidity to CBSX, which will benefit all market participants. By encouraging market participants to hit certain threshold of executing at least increasing amounts of shares a day (at which point such market participants would receive the corresponding lower Maker fees for all shares executed by the market participant that day), the Exchange incentivizes market participants who may be able to meet that threshold to add more volume and liquidity to the CBSX marketplace. This increased volume and liquidity would benefit all CBSX market participants, including those who do not trade at the higher levels, by providing them with more opportunities for execution. Orders that provide liquidity increase the likelihood that members seeking to access liquidity will have their orders filled. If the lower rates did not exist for market participants who execute increased amounts of shares a day, even those market participants who do not hit those thresholds would not receive the benefit of this added volume and liquidity. Applying the thresholds on a daily basis will encourage these larger-volume market participants to add volume and liquidity on a consistent basis, and the resulting consistently-available executions will benefit all market participants. As such, the Exchange believes that it is reasonable and equitable to use pricing incentives, such as lower fees for creating large amounts of liquidity, to encourage market participants to increase their participation in the market.

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 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 neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and paragraph (f)(2) of Rule 19b–4[7] 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–2012–029 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.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

All submissions should refer to File Number SR–CBOE–2012–029. 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–2012–029 and should be submitted on or before April 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–7772 Filed 3–30–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66664; File No. SR–Phlx–2012–36]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

March 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that, on March 19, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase its Options Regulatory Fee (''ORF'').

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative June 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the ORF to increase it from $0.004 per contract to $0.0045 per contract in order to recoup increased regulatory expenses while also ensuring that the ORF will not exceed costs.

The ORF is assessed to each member for all options transactions executed or cleared by the member that are cleared at The Options Clearing Corporation (''OCC'') in the customer range (i.e., that clear in the customer account of the member's clearing firm at OCC). The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. The ORF is imposed upon all transactions executed by a member, even if such transactions do not take place on the Exchange.[3] The ORF also includes options transactions that are not executed by an Exchange member but are ultimately cleared by an Exchange member.[4] The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, do not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

[3] The ORF applies to all ''C'' account origin code orders executed by a member on the Exchange. Exchange Rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the Rules of the Exchange and report resulting transactions to OCC. *See* Exchange Rule 1063, Responsibilities of Floor Brokers, and Options Floor Procedure Advice F–4, Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[4] In the case where one member both executes a transaction and clears the transaction, the ORF is assessed to the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF is assessed only to the member who executes the transaction and is not assessed to the member who clears the transaction. In the case where a non-member executes a transaction and a member clears the transaction, the ORF is assessed to the member who clears the transaction.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the fee change is reasonable because the Exchange's collection of ORF has declined due to a decrease in industry volume and the adjustment would serve to provide the Exchange with additional ORF. The additional ORF offsets regulatory expenses, but does not exceed regulatory costs.

The Exchange believes that the ORF is equitable and not unfairly discriminatory because it is objectively allocated to Exchange members in that it would continue to be charged to all members on all of their transactions that clear as customer at OCC. The Exchange is assessing higher fees to those member firms that require more Exchange regulatory services based on the amount of customer options business they conduct. In addition, the ORF seeks to recover the costs of supervising and regulating members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–36 and should be submitted on or before April 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–7771 Filed 3–30–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Advanced BioPhotonics, Inc., Advanced Viral Research Corp., Brantley Capital Corp., Brilliant Technologies Corporation, 4C Controls, Inc., and 2–Track Global, Inc.; Order of Suspension of Trading

March 29, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Advanced BioPhotonics, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Advanced Viral Research Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Brantley Capital Corp. because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a

lack of current and accurate information concerning the securities of Brilliant Technologies Corporation because it has not filed any periodic reports since the period ended March 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 4C Controls, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 2–Track Global, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on March 29, 2012, and terminating at 11:59 p.m. EDT on April 12, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–7942 Filed 3–29–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Angstrom Microsystems Corp., Bedminster National Corp., Brake Headquarters U.S.A., Inc., and BrandPartners Group, Inc.; Order of Suspension of Trading

March 29, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Angstrom Microsystems Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bedminster National Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Brake Headquarters U.S.A., Inc. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BrandPartners Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on March 29, 2012, and terminating at 11:59 p.m. EDT on April 12, 2012.

By the Commission.

Jill M. Peterson,

Secretary.

[FR Doc. 2012–7943 Filed 3–29–12; 4:15 pm]

BILLING CODE 8011–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS429]

WTO Dispute Settlement Proceeding Regarding United States; Anti-Dumping Measures on Certain Shrimp from Viet Nam

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (AUSTR@) is providing notice that on February 21, 2012, the Socialist Republic of Vietnam (''Vietnam'') requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* (AWTO Agreement@) concerning certain antidumping administrative reviews and a sunset review conducted by the Department of Commerce on imports of certain frozen warmwater shrimp from Vietnam (Investigation A–552–802), and various U.S. laws, regulations, administrative procedures, practices, and methodologies. That request may be found at *www.wto.org* contained in a document designated as WT/DS429/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before April 13, 2012, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically using *www.regulations.gov,* docket number USTR–2012–0003. If you are unable to provide submissions using *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: J. Daniel Stirk, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by Vietnam

On February 21, 2012, Vietnam requested consultations regarding certain antidumping administrative reviews and a sunset review conducted by the Department of Commerce on certain frozen warmwater shrimp from Vietnam, referring in particular to the use of what it describes as ''zeroing'' in those reviews. Specifically, Vietnam challenges (1) the imposition of antidumping duties and cash deposit requirements pursuant to the final results of the fourth administrative review for the period from February 1, 2008, to January 31, 2009, in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 47771 (August 9, 2010); (2) the fourth administrative review of *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam* insofar as it did not revoke the antidumping duty order with respect to certain respondents requesting such revocation; (3) the imposition of antidumping duties and cash deposit requirements pursuant to the final results of the fifth administrative review

for the period from February 1, 2009, through January 31, 2010, in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 56158 (September 12, 2011); (4) the fifth administrative review of *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam* insofar as it did not revoke the antidumping duty order with respect to certain respondents requesting such revocation; (5) any other ongoing or future antidumping administrative reviews, and the preliminary and final results thereof, related to the imports of certain frozen warmwater shrimp from Vietnam (DOC case A–552–802), as well as any assessment instructions, cash deposit requirements, and revocation determinations issued pursuant to such reviews; (6) the final results of the sunset review in which the Department of Commerce determined that revocation of the antidumping duty order would be likely to lead to the continuation or recurrence of dumping, *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Five-Year ''Sunset'' Review of the Antidumping Duty Order,* 75 FR 75965 (December 7, 2010); and
(7) Section 129 of the Uruguay Round Agreements Act (''URAA'') and the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994), reprinted in 1994 U.S.C.C.A.N. 4040.

With regard to these measures, Vietnam also has indicated it would like to consult regarding various U.S. laws, regulations, administrative procedures, practices, and methodologies, including (1) the Tariff Act of 1930, as amended, in particular sections 731, 751, 752, 771(7), 771(35)(A), 771(35)(B), and 777A(d); (2) Section 129 of the URAA; (3) the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994), reprinted in 1994 U.S.C.C.A.N. 4040; (4) Department of Commerce regulations set forth in part 351 of Title 19 of the Code of Federal Regulations, in particular sections 351.218 and 351.414; (5) the Import Administration Antidumping Manual (2009 ed.), including the computer programs referenced therein; (6) the Department of Commerce's Policy Bulletin 98.3, ''Policies Governing the Conduct of Five-Year ('Sunset') Reviews of Antidumping and Countervailing Duty Orders'' (April 16, 1998), 63 FR 18871 (April 16, 1998); (7) the Department of Commerce's methodology for determining margins of dumping in administrative reviews; (8) the practice of requiring submission of a separate rate application or certification in original investigations and periodic reviews concerning Vietnamese producers in order to qualify for the all others—or ''separate''—rate; (9) the practice of limiting the number of respondents selected for individual examination to only a small fraction of the total number of companies seeking individual review and the accompanying failure to provide alternative methods for non-investigated respondents to demonstrates that they are no longer dumping; (10) the application of a so-called Vietnam-wide entity rate based on adverse facts available to respondents not individually investigated who fail to provide a separate rate application or certification to demonstrate the absence of government control; (11) the practice of denying individually examined and non-individually examined respondents the opportunity to demonstrate the absence of dumping, which would allow for the dumping order to be revoked as to individual respondents that cease dumping behavior; (12) the Department of Commerce's practice and methodology in five-year (''sunset'') reviews for determining whether revocation of antidumping orders would be likely to lead to continuation or recurrence of dumping; and (13) the practice of implementing adverse Dispute Settlement Body rulings, pursuant to Section 129 of the URAA, such that unliquidated entries entered or withdrawn from the warehouse for consumption prior to the date of a Section 129 determination remain subject to assessment of duties pursuant to the original antidumping duty determination.

Vietnam alleges that these laws, regulations, administrative procedures, practices, and methodologies are, as such and as applied in the determinations by the Department of Commerce and actions by U.S. Customs and Border Protection in the shrimp administrative reviews and the sunset review, inconsistent with Articles I:1, VI:1, VI:2, and X:3(a) of the General Agreement on Tariffs and Trade 1994; Articles 1, 2.1, 2.4, 2.4.2, 6, 9, 11, 17.6(i), and Annex II of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement); Article XVI:4 of the WTO Agreement; Articles 3.7, 19.1, 21.1, 21.3, and 21.5 of the DSU; and Vietnam's Protocol of Accession to the WTO.

Vietnam alleges that the United States acted inconsistently with the WTO Agreement obligations identified above by applying so-called ''zeroing'' in the determination of the margins of dumping in the reviews identified above, by limiting the selection of Vietnamese respondents seeking a review such that non-reviewed companies were denied an opportunity to demonstrate the absence of dumping, by treating the Vietnam-wide entity as a single entity and applying to that entity a dumping rate determined on the basis of facts available, the continued use of these practices, the use of dumping margins calculated using ''zeroing'' to make the final determination in the sunset review, and the use of WTO-inconsistent antidumping duty assessment rates applied to unliquidated entries that are assessed following a Section 129 determination that implements an adverse WTO Dispute Settlement Body ruling.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically using *www.regulations.gov* docket number USTR–2012–0003. If you are unable to provide submissions using *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2012–0003 on the home page and click ''search''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''Help'' at the top of the home page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comments'' field, or by attaching a document using an ''upload file'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is necessary and sufficient to type ''See attached'' in the ''Type Comments'' field. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to

the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection. Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at *www.regulations.gov*, docket number USTR–2012–0003.

The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *www.wto.org.* Comments open to public inspection may be viewed on the *www.regulations.gov* Web site.

Bradford L. Ward,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2012–7605 Filed 3–30–12; 8:45 am]

BILLING CODE 3190–W2–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 2012–3–7; Docket DOT–OST–2012–0022]

Proposed Cancelation

of the Air Taxi Authority Of VIH Cougar Helicopters, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2012–3–7) Docket DOT–OST–2012–0022.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that VIH Cougar Helicopters, Inc. is not a U.S. citizen as defined in 49 U.S.C. 40102(a)(15) and canceling its Part 298 exemption authority.

DATES: Persons wishing to file objections should do so no later than April 2, 2012. .

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2012–0022 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Damon D. Walker, Air Carrier Fitness Division (X–56, Room W86–465), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–7785.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2012–6408 Filed 3–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. DOT–OST–2012–0046]

Notice of Transportation Services' Transition from Paper to Electronic Fare Media

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation's Office of Transportation Services (TRANServe), located within the Office of the Assistant Secretary for Administration, has initiated the adoption of a new program distribution methodology for transit benefits. TRANServe has shifted to electronic fare media in specific areas in New York, parts of the National Capitol Region, and parts of the Southeast. TRANServe intends to implement electronic fare media across the United States within the eight TRANServe Geographic Service Areas as it ensures that the implementation in each area will be consistent with applicable statutes and regulations. The implementation of electronic distribution, and a limited paper voucher process, allows for the most effective and efficient mechanism for the qualified transportation fringe benefit.

DATES: TRANServe will consider all comments received on or before April 23, 2012.

ADDRESSES: You may submit comments by the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. DOT–OST–2012–0046, DOT/TRANServe, 1200 New Jersey Ave. SE., Washington, DC 20590.

Reading Room (Public Terminal): You may read any comments that we receive on this docket in our reading room (Public Terminal). The reading room is located in room W12–140 of the US DOT 1200 New Jersey Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 or (202) 366–9317 before arriving.

Other Information: Additional information about TRANServe is available on the internet at (*http://transerve.dot.gov/index.html*).

FOR FURTHER INFORMATION CONTACT: Ms. Denise P. Wright, Business Office Manager, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

TRANServe provides service to over 250,000 transit benefit participants employed by over 100 federal organizations nationwide. Since the program's inception, TRANServe has distributed the qualified transportation fringe benefit to participating Federal employees via a paper voucher process. To that end, TRANServe has operated a highly sophisticated ordering, inventory and distribution program supported by a complex network of activities, such as statistical forecasting for nationwide distribution, multi-million dollar contract awards, support arrangements for travel and distribution, and an elaborate array of financial analysis for billing participating Federal agencies. In addition to a growing number of participants, many state and local transit authorities have transitioned, or are transitioning, to electronic fare media, compelling the shift from a paper based system (vouchers) to an electronic fare media structure. TRANServe has also experienced rising program costs related to inventory, travel, and infrastructure support, requiring that TRANServe adopt a new distribution method from paper to electronic fare media. As a result, TRANServe is implementing an efficient and effective electronic fare media transition to its participating transit benefit agencies, consistent with statutory requirements in 49 U.S.C. 327, Administrative Working Capital Fund; 26 U.S.C. 132(f), Qualified Transportation Fringe; 31 U.S.C. 3302, Custodians of Money; Federal Employees Clean Air Incentives Act (Pub. L. 103–172); and Executive Order 13150, Federal Workforce Transportation. To date, for instance, TRANServe has shifted to electronic fare media in specific areas in New York, parts of the National Capitol Region, and parts of the Southeast. TRANServe intends to implement electronic fare media across the United States within the eight identified TRANServe areas. The eight Geographic TRANServe Service Areas are segmented based on TRANServe participant population and natural Transit Authority boundaries. The eight TRANServe Geographic Service Areas are as follows:

Service Area 1—Washington, DC, Maryland, and Virginia.

Service Area 2—(Southeast)—Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, and Louisiana.

Service Area 3—(Upper Midwest)—Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, West Virginia, Kentucky, Virgin Islands, and Puerto Rico.

Service Area 4—(Pacific Northwest)—Washington, Oregon, Alaska, Idaho, Montana, North Dakota, South Dakota, Wyoming, and Nebraska.

Service Area 5—(Northeast)—Maine, Massachusetts, Vermont, New York, Rhode Island, New Hampshire, Connecticut, New Jersey, Pennsylvania, and Delaware.

Service Area 6—California.

Service Area 7—(Southwest-HI)—Hawaii, Nevada, Arizona, New Mexico, Utah, and Colorado.

Service Area 8—(Upper TX—Lower Midwest)—Texas, Missouri, Arkansas, Iowa, Louisiana, Kansas, and Oklahoma.

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of TRANServe's distribution method should file comments in the Public Docket (Docket Number DOT–OST–2012–0046) at *www.Regulations.gov.*

Issued in Washington, DC, on March 26, 2012.

Marie Petrosino-Woolverton,

Director, Office of Financial Management & Transportation Services.

[FR Doc. 2012–7804 Filed 3–30–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–09]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before April 23, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–0119 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas ARM–105, (202) 267–7626, FAA, Office of Rulemaking, 800 Independence Ave SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 23, 2012.

Brenda D. Courtney,

Acting Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2012–0119.

Petitioner: The Wright Experience, Inc.

Section of 14 CFR Affected: 14 CFR 103.1(d).

Description of Relief Sought: The relief sought would allow The Wright Experience, Inc., to operate its replica of the 1911 Wright Brother's glider at a weight more than 155 pounds.

[FR Doc. 2012–7893 Filed 3–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0378]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from twelve individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision requirement.

DATES: Comments must be received on or before May 2, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0378 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The twelve individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Robert J. Abbas

Mr. Abbas, age 62, has had amblyopia in his left eye since birth. The best corrected visual acuity in right eye is 20/20 and in his left eye, 20/100. Following an examination in 2011, his ophthalmologist noted, ''In my medical opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Abbas reported that he has driven tractor-trailer combinations for 31 years, accumulating 2.3 million miles. He holds a Class A Commercial Driver's License (CDL) from Minnesota. His driving record for the last 3 years shows no crashes and one conviction for speeding in a Commercial Motor Vehicle (CMV); he exceeded the speed limit by 13 mph.

Paul T. Browning

Mr. Browning, 50, has a severed optic nerve in his right eye due to a traumatic injury sustained in 1995. The best corrected visual acuity in right eye is light perception and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''It is my opinion after examining Mr. Browning that visually he is able to operate a commercial motor vehicle in a safe and prudent manner.'' Mr. Browning reported that he has driven straight trucks for 13 years, accumulating 273,000 miles. He holds a Class B CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert P. Clark

Mr. Clark, 66, has a detached retina in his left eye due to a traumatic injury sustained in 1967. The best corrected visual acuity in right eye is 20/20 and in his left eye, hand motion vision. Following an examination in 2011, his optometrist noted, ''It is my opinion that Mr. Clark has sufficient vision to operate a commercial vehicle.'' Mr. Clark reported that he has driven straight trucks for 45 years, accumulating 1.1 million miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; driving a CMV while disqualified.

Carey C. Earwood

Mr. Earwood, 67, has a corneal scar in his left eye due to an injury sustained 55 years ago. The best corrected visual acuity in right eye is 20/20 and in his left eye, 20/70. Following an examination in 2011, his optometrist noted, ''Based on the results of the examination, Mr. Carey Earwood was found to have sufficient vision to safely operate a motor vehicle.'' Mr. Earwood reported that he has driven tractor-trailer combinations for 40 years, accumulating 4.4 million miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Cheryl G. Johnson

Mrs. Johnson, 66, has had complete loss of vision in her left eye since birth. The best corrected visual acuity in right

eye 20/20. Following an examination in 2011, his ophthalmologist noted, ''In my opinion Mrs. Johnson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mrs. Johnson reported that she has driven buses trucks for 24 years, accumulating 288,000 miles. She holds a chauffeur's license from Indiana. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kevan J. Larson

Mr. Larson, 28, has had macular scarring in his left eye since birth. The best corrected visual acuity in his right eye is 20/15, and in his left eye, count-finger vision. Following an examination in 2011, his optometrist noted, ''In my medical opinion, and based upon results of Kevan's vision examination, I believe he has sufficient vision capabilities to perform the driving tasks required to operate a commercial vehicle.''

Mr. Larson reported that he has driven straight trucks for 10 years, accumulating 280,000 miles. He holds a Class D operator's license from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Melvin D. Rolfe

Mr. Rolfe, 57, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, ''I feel he has sufficient vision to perform the driving tasks of a commercial vehicle.'' Mr. Rolfe reported that he has driven straight trucks for 4 years, accumulating 80,000 miles. He holds a Class D operator's license from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gilbert M. Rosas

Mr. Rosas, 44, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/100. Following an examination in 2011, his optometrist noted, ''I certify that patient Gilbert Rosas has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Rosas reported that he has driven straight trucks for 14 years, accumulating 1.1 million miles and tractor-trailer combinations for 3 years, accumulating 150,000 miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kim A. Shaffer

Mr. Shaffer, 61, has a prosthetic right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2011, his optometrist noted, ''This patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Shaffer reported that he has driven tractor-trailer combinations for 40 years, accumulating 1.4 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry W. Slinker

Mr. Slinker, 59, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, ''In my opinion, he should be able to perform the driving tasks required to operate a commercial vehicle.'' Mr. Slinker reported that he has driven tractor-trailer combinations for 2 years, accumulating 280,000 miles and buses for 2 years, accumulating 41,600 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lonnie J. Supanchick

Mr. Supanchick, 59, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/25, and in his left eye, 20/150. Following an examination in 2011, his optometrist noted, ''In my opinion, Mr. Lonnie Supanchick has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Supanchick reported that he has driven straight trucks for 11 years, accumulating 137,500 miles and tractor-trailer combinations for 10 years, accumulating 175,000 miles. He holds a Class B CDL from Nevada. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gerald W. Warner

Mr. Warner, 20, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/70 and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, ''In my professional opinion, Mr. Warner has sufficient vision to operate a commercial vehicle and to perform the driving tasks required.'' Mr. Warner reported that he has driven straight trucks for 32 years, accumulating 480,000 miles and tractor-trailer combinations for 32 years, accumulating 1.6 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business May 2, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: March 28, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–7896 Filed 3–30–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TREASURY

Office of Domestic Finance; Small Business, Community Development and Affordable Housing Policy; Small Business Lending Fund; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Small Business Lending Fund (SBLF) within the Department of Treasury is soliciting comments concerning the Small Business Lending Survey it proposes to administer to participants in the SBLF.

DATES: Written comments should be received on or before June 1, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Office of Domestic Finance, Small Business Lending Fund; Daniel Rourke; 1500 Pennsylvania Avenue NW., Washington, DC 20220; 202–622–0984; *daniel.rourke@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Office of Domestic Finance, Small Business Lending Fund; Daniel Rourke; 1500 Pennsylvania Avenue NW., Washington, DC 20220; 202–622–0984; *daniel.rourke@treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Lending Survey of Participants in Small Business Lending Fund.

Abstract: Established by the Small Business Jobs Act of 2010 (the Act), the Small Business Lending Fund (SBLF) is a dedicated investment fund that encourages lending to small businesses by providing capital to qualified community banks and community development loan funds (CDLFs) with assets of less than $10 billion. Through the SBLF, participating Main Street lenders and small businesses work together to help create jobs and promote economic growth in local communities across the nation.

The Act required that all U.S. Department of the Treasury (Treasury) investments for the SBLF be made by September 27, 2011. Through the SBLF, Treasury made investments in 332 community institutions, including banks, thrifts and CDLFs. The size of the SBLF portfolio is approximately $4.03 billion (approximately $3.9 billion in 281 community banks and approximately $100 million in 51 CDLFs). To encourage small business lending, the dividend or interest rate on SBLF funding provided to banks and thrifts is reduced as these participants increase their qualified small business lending. The SBLF does not use the same standards that the Small Business Administration uses to determine what qualifies as a small business loan. For more details about the program, please visit *www.treasury.gov/sblf.*

Treasury plans to conduct an annual lending survey with the program participants to identify the impact of the investment on lending to small businesses, consistent with the purpose of the Act to increase the availability of credit for small businesses. This survey is not required by law, but the SBLF Securities Purchase Agreement requires participants to complete a survey in a form specified by Treasury. Below is a description of the information that the SBLF Program Office is looking for to assist with the aforementioned annual lending survey.

Current Actions: Treasury plans to collect information from SBLF participants about the small business lending supported by SBLF's investment. SBLF will request information from participants on changes in small business lending capacity as a result of the SBLF investment, the amounts and volume of loans extended across different categories of small business lending attributable to the SBLF investment, and the types and extent of outreach undertaken to expand lending to small businesses in underserved communities and small businesses owned by women, minorities and veterans resulting from participation in the SBLF.

Type of Review: New, Non-Rulemaking.

Affected Public: Businesses or other for-profit, and not-for-profit institutions.

Estimated Number of Respondents: All 332 SBLF Participants.

Estimated Total Burden Hours: 996 hours.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the SBLF, including whether the information shall have a practical utility; (b) the accuracy of the SBLF's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 26, 2012.

Daniel Rourke,

SBLF Outreach Manager.

[FR Doc. 2012–7900 Filed 3–30–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974, as Amended

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Alteration of Privacy Act System of Records for the Home Affordable Modification Program, hereinafter known as the Making Home Affordable Program.

SUMMARY: The U.S. Department of the Treasury (Department) gives notice of four proposed alterations to the system of records currently entitled as ''Treasury/DO .218—Home Affordable Modification Program'': (1) The system of records shall be entitled, ''Treasury/DO.218—Making Home Affordable Program''; (2) the system of records may include a borrower's criminal history, or lack thereof, as a category of record relating to borrower eligibility; (3) the system of records may include property sale information as a category of record; and (4) the system of records shall reference the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, Section 1481 (2010) (Dodd-Frank statute) as legal authority for the collection of a borrower's criminal history or lack thereof. In light of the proposed name change from Home Affordable Modification Program to Making Home Affordable Program, the entire system of records notice, as amended on August 3, 2011, is set forth below.

DATES: Comments must be received no later than May 2, 2012. This altered system of records will be effective May 7, 2012 unless the Department receives comments which would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Financial Stability, Office of Financial Agents, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, or may be emailed to *OFA.SORN@treasury.gov.* The Department will make such comments available for public inspection and copying in the Department's Library, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990 (This is not a toll-free number). All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Janet E. Vail, Office of Financial Agents, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220, tel.: 202–927–0597, email: *OFA.SORN@treasury.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343) (EESA), the Department established the Making Home Affordable Program

(MHA Program) to stabilize the housing market and provide relief to struggling homeowners. Since its launch, the Department expanded the MHA Program to provide more options for struggling homeowners, including but not limited to programs for homeowners who are unemployed, owe more on their home than it is currently worth, or are struggling with a second lien.

The purpose of these four alterations is to: (1) Update the name of certain of the Department's EESA authorized housing programs from Home Affordable Modification Program (HAMP) to Making Home Affordable Program to recognize that homeowners may be eligible for other housing relief options in addition to the modification of principal amounts and interest rates of their mortgage loans under HAMP; (2) add a borrower's criminal history, or lack thereof, to the types of records that may be retained information in the system relating to borrower eligibility, consistent with the requirements of Section 1481 of the Dodd-Frank statute; (3) add the sale of the borrower's property to the types of records that may be retained information in the system; and (4) include the Dodd-Frank statute as a second statutory authority for maintenance of the system.

The system of records notice was last published in its entirety on April 20, 2010, at 75 FR 20699. The Department subsequently amended the notice on July 2, 2010, at 75 FR 38608, and then again on June 24, 2011, at 76 FR 37193, which became effective on August 3, 2011.

The system of records notice for the amended ''Treasury/DO .218—Home Affordable Modification Program,'' is published in its entirety below.

Dated: March 14, 2012.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

Treasury/DO .218

SYSTEM NAME:

Making Home Affordable Program.

SYSTEM LOCATION:

The Office of Financial Stability, Department of the Treasury, Washington, DC. Other facilities that maintain this system of records are located in: Urbana, MD, Dallas, TX, and a backup facility located in Reston, VA, all belonging to the Federal National Mortgage Association (Fannie Mae); in McLean, VA, Herndon, VA, Reston, VA, Richardson, TX, and Denver, CO, facilities operated by or on behalf of the Federal Home Loan Mortgage Corporation (Freddie Mac); and facilities operated by or on behalf of the Bank of New York Mellon (BNYM) in Nashville, TN, and a backup facility located in Somerset, NJ. Fannie Mae, Freddie Mac and Bank of New York Mellon have been designated as Financial Agents (Financial Agents) for the MHA Program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains information about mortgage borrowers that is submitted to the Department or its Financial Agents by loan servicers that participate in the MHA Program. Information collected pursuant to the MHA Program is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other business entities and organizations is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains loan-level information about individual mortgage borrowers (including loan records, financial records, and borrower eligibility records, when appropriate.) Typically, these records include, but are not limited to, the individual's name, Social Security Number, mailing address, monthly income, criminal history status as referenced in Section 1481 of the Dodd-Frank statute, the location of the property subject to the loan, property value information, payment history, type of mortgage, and property sale information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343) and Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203) (2010).

PURPOSE(S):

The purpose of this system of records is to facilitate administration of the MHA Program by the Department and its Financial Agents, including by enabling them to (i) collect and utilize information collected from mortgage loan servicers, including loan-level information about individual mortgage holders and borrower eligibility; and (ii) produce reports on the performance of the MHA Program, such as reports that concern loan modification eligibility and exception reports that identify certain issues that loan servicers may experience with servicing loans.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting violations of or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court order where arguably relevant to a proceeding, or in connection with criminal law proceedings;

(4) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to third parties during the course of a Department investigation as it relates to the MHA Program to the extent necessary to obtain information pertinent to that investigation;

(6) Disclose information to a consumer reporting agency to use in obtaining credit reports;

(7) Disclose information to a debt collection agency for use in debt collection services;

(8) Disclose information to a Financial Agent of the Department, its employees, agents, and contractors, or to a contractor of the Department, for the purpose of assessing the quality of and efficient administration of the MHA Program and compliance with relevant guidelines, agreements, directives and requirements, and subject to the same or equivalent limitations applicable to the Department's officers and employees under the Privacy Act;

(9) Disclose information originating or derived from participating loan servicers back to the same loan servicers as needed, for the purposes of audit, quality control, and reconciliation and response to borrower requests about that same borrower;

(10) Disclose information to Financial Agents, financial institutions, financial custodians, and contractors to: (a) Process mortgage loan modification

applications, including, but not limited to, enrollment forms; (b) implement, analyze and modify programs relating to the MHA Program; (c) investigate and correct erroneous information submitted to the Department or its Financial Agents; (d) compile and review data and statistics and perform research, modeling and data analysis to improve the quality of services provided under the MHA Program or otherwise improve the efficiency or administration of the MHA Program; or (e) develop, test and enhance computer systems used to administer the MHA Program; with all activities subject to the same or equivalent limitations applicable to the Department's officers and employees under the Privacy Act;

(11) Disclose information to financial institutions, including banks and credit unions, for the purpose of disbursing payments and/or investigating the accuracy of information required to complete transactions pertaining to the MHA Program and for administrative purposes, such as resolving questions about a transaction;

(12) Disclose information to the appropriate Federal financial regulator or State financial regulator, or to the appropriate Consumer Protection agency, if that agency has jurisdiction over the subject matter of a complaint or inquiry, or the entity that is the subject of the complaint or inquiry;

(13) Disclose information and statistics to the Department of Housing & Urban Development (HUD), the Department of Commerce (Commerce), Federal financial regulators, the U.S. Department of Justice (DOJ), and the Federal Housing Finance Agency to assess the quality and efficiency of services provided under the MHA Program, to ensure compliance with the MHA Program and other laws, and to report on the Program's overall execution and progress;

(14) Disclose information to appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) 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 (c) 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;

(15) Disclose information to the DOJ for its use in providing legal advice to the Department or in representing the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, where the use of such information by the DOJ is deemed by the Department to be relevant and necessary to the litigation, and such proceeding names as a party of interests:

(a) The Department or any component thereof, including the Office of Financial Stability (OFS);

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Department determines that litigation is likely to affect the Department or any of its components, including OFS; and

(16) Disclose information to an authorized recipient who has assured the Department or a Financial Agent of the Department in writing that the record will be used solely for research purposes designed to assess the quality of and efficient administration of the MHA Program, subject to the same or equivalent limitations applicable to the Department's officers and employees under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in the system of records is stored in a transactional database and an operational data store. Information from the system will also be captured in hard-copy form and stored in filing cabinets managed by personnel working on the MHA Program.

RETRIEVABILITY:

Information about individuals may be retrieved from the system by reference including the mortgage borrower's name, Social Security Number, address, criminal history status, or loan number.

SAFEGUARDS:

Safeguards designed to protect information contained in the system against unauthorized disclosure and access include, but are not limited to: (i) Department and Financial Agent policies and procedures governing privacy, information security, operational risk management, and change management; (ii) requiring Financial Agent employees to adhere to a code of conduct concerning the aforementioned policies and procedures; (iii) conducting background checks on all personnel with access to the system of records; (iv) training relevant personnel on privacy and information security; (v) tracking and reporting incidents of suspected or confirmed breaches of information concerning borrowers; (vi) establishing physical and technical perimeter security safeguards; (vii) utilizing antivirus and intrusion detection software; (viii) performing risk and controls assessments and mitigation, including production readiness reviews; (ix) establishing security event response teams; and (x) establishing technical and physical access controls, such as role-based access management and firewalls. Loan servicers that participate in the MHA Program (i) have agreed in writing that the information they provide to the Department or to its Financial Agents is accurate, and (ii) have submitted a ''click through'' agreement on a Web site requiring the loan servicer to provide accurate information in connection with using the Program Web site. In addition, the Department's Financial Agents will conduct loan servicer compliance reviews to validate data collection controls, procedures, and records.

RETENTION AND DISPOSAL:

Information is retained in the system on back-up tapes or in hard-copy form for seven years, except to the extent that either (i) the information is subject to a litigation hold or other legal retention obligation, in which case the data is retained as mandated by the relevant legal requirements, or (ii) the Department and its Financial Agents need the information to carry out the Program. Destruction is carried out by degaussing according to industry standards. Hard copy records are shredded and recycled.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Deputy Assistant Secretary, Fiscal Operations and Policy, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, to gain access to records maintained in this system, or to amend or correct information maintained in this system, must submit a written request to do so in accordance with the procedures set forth in 31 CFR 1.26–.27. Address such requests to: Director, Disclosure Services, Department of the

Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURE:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information about mortgage borrowers contained in the system of records is obtained from loan servicers who participate in the MHA Program, or developed by the Department and its Financial Agents in connection with the MHA Program. Information is not obtained directly from individual mortgage borrowers to whom the information pertains.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–7754 Filed 3–30–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Issue Of United States Mortgage Guaranty Insurance Company Tax And Loss Bonds.

DATES: Written comments should be received on or before May 31, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Application For Issue Of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Form Number: PD F 3871.

Abstract: The information is used to establish and maintain Tax and Loss Bond Accounts.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 33.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 8.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 28, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–7809 Filed 3–30–12; 8:45 am]

BILLING CODE 4810–39–P

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the San Francisco Bay-Delta Population of the Longfin Smelt as Endangered or Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2008–0045: 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the San Francisco Bay-Delta Population of the Longfin Smelt as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the San Francisco Bay-Delta distinct population segment (Bay Delta DPS) of longfin smelt as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing the longfin smelt rangewide is not warranted at this time, but that listing the Bay-Delta DPS of longfin smelt is warranted. Currently, however, listing the Bay-Delta DPS of longfin smelt is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month finding, we will add the Bay-Delta DPS of longfin smelt to our candidate species list. We will develop a proposed rule to list the Bay-Delta DPS of longfin smelt as our priorities allow. We will make any determinations on critical habitat during the development of the proposed listing rule. During any interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review (CNOR).

DATES: The finding announced in this document was made on April 2, 2012.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number [FWS–R8–ES–2008–0045]. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, San Francisco Bay-Delta Fish and Wildlife Office, 650 Capitol Mall, Sacramento, CA 95814. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Mike Chotkowski, Field Supervisor, San Francisco Bay-Delta Fish and Wildlife Office (see **ADDRESSES**); by telephone at 916–930–5603; or by facsimile at 916–930–5654 *mailto:*. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On November 5, 1992, we received a petition from Mr. Gregory A. Thomas of the Natural Heritage Institute and eight co-petitioners to add the longfin smelt (*Spirinchus thaleichthys*) to the List of Endangered and Threatened Wildlife and designate critical habitat in the Sacramento and San Joaquin Rivers and estuary. On July 6, 1993, we published a 90-day finding (58 FR 36184) in the **Federal Register** that the petition contained substantial information indicating the requested action may be warranted, and that we would proceed with a status review of the longfin smelt. On January 6, 1994, we published a notice of a 12-month finding (59 FR 869) on the petition to list the longfin smelt. We determined that the petitioned action was not warranted, based on the lack of population trend data for estuaries in Oregon and Washington, although the southernmost populations were found to be declining. Furthermore, we found the Sacramento-San Joaquin River estuary population of longfin smelt was not a distinct population segment (DPS) because we determined that the population was not biologically significant to the species as a whole, and did not appear to be sufficiently reproductively isolated.

On August 8, 2007, we received a petition from the Bay Institute, the Center for Biological Diversity, and the Natural Resources Defense Council to list the San Francisco Bay-Delta (hereafter referred to as the Bay-Delta) population of the longfin smelt as a DPS and designate critical habitat for the DPS concurrent with the listing. On May 6, 2008, we published a 90-day finding (73 FR 24911) in which we concluded that the petition provided substantial information indicating that listing the Bay-Delta population of the longfin smelt as a DPS may be warranted, and we initiated a status review. On April 9, 2009, we published a notice of a 12-month finding (74 FR 16169) on the August 8, 2007, petition. We determined that the Bay-Delta population of the longfin smelt did not meet the discreteness element of our DPS policy and, therefore, was not a valid DPS. We therefore determined that the Bay-Delta population of the longfin smelt was not a listable entity under the Act.

On November 13, 2009, the Center for Biological Diversity filed a complaint in U.S. District Court for the Northern District of California, challenging the Service on the merits of the 2009 determination. On February 2, 2011, the Service entered into a settlement agreement with the Center for Biological Diversity and agreed to conduct a rangewide status review and prepare a 12-month finding to be published by September 30, 2011. In the event that the Service determined in the course of the status review that the longfin smelt does not warrant listing as endangered or threatened over its entire range, the Service agreed to consider whether any population of longfin smelt qualifies as a DPS. In considering whether any population of longfin smelt qualifies as a DPS, the Service agreed to reconsider whether the Bay-Delta population of the longfin smelt constitutes a DPS. At the request of the Service, Department of Justice requested an extension from the Court to allow for a more comprehensive review of new information pertaining to the longfin smelt and to seek the assistance of two expert panels to assist us with that review. The plaintiffs filed a motion of non-opposition, and on October 3, 2011, the court granted an extension to March

23, 2012 for the publication of a new 12-month finding.

Species Information

Species Description and Taxonomy

Longfin smelt measure 9–11 centimeters (cm) (3.5–4.3 inches (in)) standard length, although third-year females may grow up to 15 cm (5.9 in). The sides and lining of the gut cavity appear translucent silver, the back has an olive to iridescent pinkish hue, and mature males are usually darker in color than females. Longfin smelt can be distinguished from other smelts by their long pectoral fins, weak or absent striations on their opercular (covering the gills) bones, incomplete lateral line, low numbers of scales in the lateral series (54 to 65), long maxillary bones (in adults, these bones extend past mid-eye, just short of the posterior margin of the eye), and lower jaw extending anterior of the upper jaw (Mcallister 1963, p. 10; Miller and Lea 1972, pp. 158–160; Moyle 2002, pp. 234–236).

The longfin smelt belongs to the true smelt family Osmeridae and is one of three species in the *Spirinchus* genus; the night smelt (*Spirinchus starksi*) also occurs in California, and the shishamo (*Spirinchus lanceolatus*) occurs in northern Japan (McAllister 1963, pp. 10, 15). Because of its distinctive physical characteristics, the Bay-Delta population of longfin smelt was once described as a species separate from more northern populations (Moyle 2002, p. 235). McAllister (1963, p. 12) merged the two species *S. thaleichthys* and *S. dilatus* because the difference in morphological characters represented a gradual change along the north-south distribution rather than a discrete set. Stanley *et al.* (1995, p. 395) found that individuals from the Bay-Delta population and Lake Washington population differed significantly in allele (proteins used as genetic markers) frequencies at several loci (gene locations), although the authors also stated that the overall genetic dissimilarity was within the range of other conspecific fish species. They concluded that longfin smelt from Lake Washington and the Bay-Delta are conspecific (of the same species) despite the large geographic separation.

Delta smelt and longfin smelt hybrids have been observed in the Bay-Delta estuary, although these offspring are not thought to be fertile because delta smelt and longfin smelt are not closely related taxonomically or genetically (California Department of Fish and Game (CDFG) 2001, p. 473).

Biology

Nearly all information available on longfin smelt biology comes from either the Bay-Delta population or the Lake Washington population. Longfin smelt generally spawn in freshwater and then move downstream to brackish water to rear. The life cycle of most longfin smelt generally requires estuarine conditions (CDFG 2009, p. 1).

Bay-Delta Population

Longfin smelt are considered pelagic and anadromous (Moyle 2002, p. 236), although anadromy in longfin smelt is poorly understood, and certain populations are not anadromous and complete their entire life cycle in freshwater lakes and streams (see *Lake Washington Population* section below). Within the Bay-Delta, the term pelagic refers to organisms that occur in open water away from the bottom of the water column and away from the shore. Juvenile and adult longfin smelt have been found throughout the year in salinities ranging from pure freshwater to pure seawater, although once past the juvenile stage, they are typically collected in waters with salinities ranging from 14 to 28 parts per thousand (ppt) (Baxter 1999, pp. 189–192). Longfin smelt are thought to be restricted by high water temperatures, generally greater than 22 degrees Celsius (°C) (71 degrees Fahrenheit (°F)) (Baxter *et. al.* 2010, p. 68), and will move down the estuary (seaward) and into deeper water during the summer months, when water temperatures in the Bay-Delta are higher. Within the Bay-Delta, adult longfin smelt occupy water at temperatures from 16 to 20 °C (61 to 68 °F), with spawning occurring in water with temperatures from 5.6 to 14.5 °C (41 to 58 °F) (Wang 1986, pp. 6–9).

Longfin smelt usually live for 2 years, spawn, and then die, although some individuals may spawn as 1- or 3-year-old fish before dying (Moyle 2002, p. 36). In the Bay-Delta, longfin smelt are believed to spawn primarily in freshwater in the lower reaches of the Sacramento River and San Joaquin River. Longfin smelt congregate in deep waters in the vicinity of the low salinity zone (LSZ) near X2 (see definition below) during the spawning period, and it is thought that they make short runs upstream, possibly at night, to spawn from these locations (CDFG 2009, p. 12; Rosenfield 2010, p. 8). The LSZ is the area where salinities range from 0.5 to 6 practical salinity units (psu) within the Bay-Delta (Kimmerer 1998, p. 1). Salinity in psu is determined by electrical conductivity of a solution, whereas salinity in parts per thousand (ppt) is determined as the weight of salts in a solution. For use in this document, the two measurements are essentially equivalent. X2 is defined as the distance in kilometers up the axis of the estuary (to the east) from the Golden Gate Bridge to the location where the daily average near-bottom salinity is 2 psu (Jassby *et al.* 1995, p. 274; Dege and Brown 2004, p. 51).

Longfin smelt in the Bay-Delta may spawn as early as November and as late as June, although spawning typically occurs from January to April (CDFG 2009, p. 10; Moyle 2002, p. 36). Longfin smelt have been observed in their winter and spring spawning period as far upstream as Isleton in the Sacramento River, Santa Clara shoal in the San Joaquin system, Hog Slough off the South-Fork Mokelumne River, and in Old River south of Indian Slough (CDFG 2009a, p. 7; Radtke 1966, pp. 115–119).

Exact spawning locations in the Delta are unknown and may vary from year to year in location, depending on environmental conditions. However, it seems likely that spawning locations consist of the overlap of appropriate conditions of flow, temperature, and salinity with appropriate substrate (Rosenfield 2010, p. 8). Longfin smelt are known to spawn over sandy substrates in Lake Washington and likely prefer similar substrates for spawning in the Delta (Baxter *et. al.* 2010, p. 62; Sibley and Brocksmith 1995, pp. 32–74). Baxter found that female longfin smelt produced between 1,900 and 18,000 eggs, with fecundity greater in fish with greater lengths (CDFG 2009, p. 11). At 7 °C (44.6 °F), embryos hatch in 40 days (Dryfoos 1965, p. 42); however, incubation time decreases with increased water temperature. At 8–9.5 °C (46.4–49.1 °F), embryos hatch at 29 days (Sibley and Brocksmith 1995, pp. 32–74).

Larval longfin smelt less than 12 millimeters (mm) (0.5 in) in length are buoyant because they have not yet developed an air bladder; as a result, they occupy the upper one-third of the water column. After hatching, they quickly make their way to the LSZ via river currents (CDFG 2009, p. 8; Baxter 2011a, pers comm.). Longfin smelt develop an air bladder at approximately 12–15 mm (0.5–0.6 in.) in length and are able to migrate vertically in the water column. At this time, they shift habitat and begin living in the bottom two-thirds of the water column (CDFG 2009, p. 8; Baxter 2008, p. 1).

Longfin smelt larvae can tolerate salinities of 2–6 psu within days of hatching, and can tolerate salinities up to 8 psu within weeks of hatching

(Baxter 2011a, pers. comm.). However, very few larvae (individuals less than 20 mm in length) are found in salinities greater than 8 psu, and it takes almost 3 months for longfin smelt to reach juvenile stage. A fraction of juvenile longfin smelt individuals are believed to tolerate full marine salinities (greater than 8 psu) (Baxter 2011a, pers. comm.).

Longfin smelt are dispersed broadly in the Bay-Delta by high flows and currents, which facilitate transport of larvae and juveniles long distances. Longfin smelt larvae are dispersed farther downstream during high freshwater flows (Dege and Brown 2004, p. 59). They spend approximately 21 months of their 24-month life cycle in brackish or marine waters (Baxter 1999, pp. 2–14; Dege and Brown 2004, pp. 58–60).

In the Bay-Delta, most longfin smelt spend their first year in Suisun Bay and Marsh, although surveys conducted by the City of San Francisco collected some first-year longfin in coastal waters (Baxter 2011c, pers. comm.; City of San Francisco 1995, no pagination). The remainder of their life is spent in the San Francisco Bay or the Gulf of Farallones (Moyle 2008, p. 366; City of San Francisco 1995, no pagination). Rosenfield and Baxter (2007, pp. 1587, 1590) inferred based on monthly survey results that the majority of longfin smelt from the Bay-Delta were migrating out of the estuary after the first winter of their life cycle and returning during late fall to winter of their second year. They noted that migration out of the estuary into nearby coastal waters is consistent with captures of longfin smelt in the coastal waters of the Gulf of Farallones. It is possible that some longfin smelt may stay in the ocean and not re-enter freshwater to spawn until the end of their third year of life (Baxter 2011d, pers. comm.). Moyle (2010, p. 8) states that longfin smelt that migrate out of and back into the Bay-Delta estuary may primarily be feeding on the rich planktonic food supply in the Gulf of Farallones. Rosenfield and Baxter (2007, p. 1290) hypothesize that the movement of longfin smelt into the ocean or deeper water habitat in summer months is at least partly a behavioral response to warm water temperatures found during summer and early fall in the shallows of south San Francisco Bay and San Pablo Bay (Rosenfield and Baxter 2007, p. 1590).

In the Bay-Delta, calanoid copepods such as *Pseudodiatomus forbesi* and *Eurytemora sp.,* as well as the cyclopoid copepod *Acanthocyclops vernali* (no common names), are the primary prey of longfin smelt during the first few months of their lives (approximately January through May) (Slater 2009b, slide 45). Copepods are a type of zooplankton (organisms drifting in the water column of oceans, seas, and bodies of fresh water). The longfin smelt's diet shifts to include mysids such as opossum shrimp (*Neomysis mercedis*) and other small crustaceans (*Acanthomysis* sp.) as soon as they are large enough (20–30 mm (0.78–1.18 in)) to consume these larger prey items, sometime during the summer months of the first year of their lives (CDFG 2009, p. 12). Upstream of San Pablo Bay, mysids and amphipods form 80–95 percent or more of the juvenile longfin smelt diet by weight from July through September (Slater 2009, unpublished data). Longfin smelt occurrence is likely associated with the occurrence of their prey, and both of these invertebrate groups occur near the bottom of the water column during the day under clear water marine conditions.

Lake Washington Population

The Lake Washington population near Seattle, Washington is considered a landlocked population of longfin smelt, as are the populations of longfin smelt in Harrison and Pitt Lakes in British Columbia east of Vancouver (Chigbu and Sibley 1994, p. 1). These populations are not anadromous and complete their entire life cycle in freshwater. Young longfin smelt feed primarily on the copepods *Diaptomus, Diaphanosoma,* and *Epischura,* with older fish switching over to mysids (Wydoski and Whitney 2003, p. 105). Chigbu and Sibley (1994, pp. 11–14) found that mysids dominate the diets of longfin smelt in their second year of life (age-1), while amphipods, copepods, and daphnia also contributed substantially to the longfin smelt's diet. A strong spawning run of longfin smelt occurs on even years in Lake Washington, with weak runs on odd years. They spawn at night in the lower reaches of at least five streams that flow into Lake Washington. Water temperatures during spawning were 4.4 °C (40 °F) to 7.2 °C (45 °F) (Wydoski and Whitney 2003, p. 105). Chigbu and Sibley (1994, p. 9) found that female longfin smelt produced between 6,000 and 24,000 eggs, while Wydoski and Whitney (2003, p. 105) found that longfin smelt produced between 1,455 and 1,655 eggs. The reason for the large difference between the observations of these two studies is not known.

Habitat

Longfin smelt have been collected in estuaries from the Bay-Delta (33° N latitude) to Prince William Sound (62° N latitude), a distance of approximately 1,745 nautical miles (Figure 1). Mean annual water temperatures range from 2.4 °C (36.3 °F) in Anchorage to 14.1 °C (57.3 °F) in San Francisco (NOAA 2011a). The different estuary types that the longfin smelt is found in and the range of variability of environments where the species has been observed will be discussed below.

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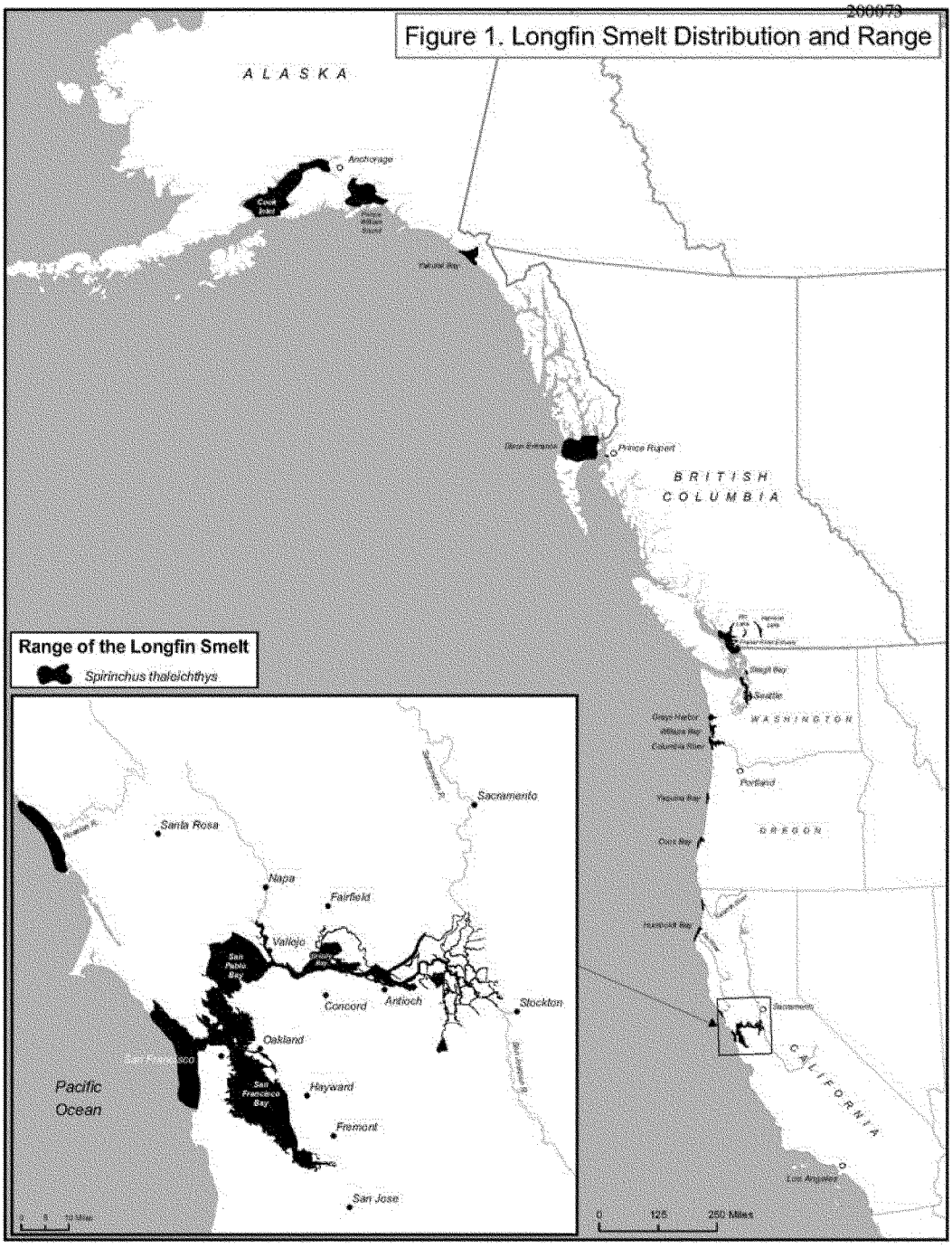


FIGURE 1. Map of coastal sites where longfin smelt are known to occur.

The origin and geomorphology of West Coast estuaries result from geologic forces driven by plate tectonics and have been modified by glaciations and sea level rise (Emmett *et al.* 2000, pp. 766–767). Major classifications of estuaries include fjord, drowned-river valley, lagoon, and bar-built. Fjords typically are long, narrow, steep-sided valleys created by glaciation, with moderately high freshwater inflow but little mixing with seawater due to the formation of a sill at the mouth (NOAA 2011b). Fjords generally have one large tributary river and numerous small streams (Emmett *et al.* 2000, p. 768). Drowned-river valleys, also termed coastal plain estuaries, are found primarily in British Columbia, Washington, and Oregon, and are the dominant type along the west coast, occurring as a result of rising sea levels following the last ice age. Lagoons, primarily found in California, occur where coastal river systems that are closed to the sea by sand spits for much of the year are breached during the winter (Emmett *et al.* 2000, p. 768). The rarest type of estuary is the bar-built, which is formed by a bar and semi-enclosed body of water (Emmett *et al.* 2000, p. 768). Estuaries have also been classified by physical or environmental

variables into Northern Riverine, Southern California, Northern Estuarine, Central Marine, Fjord, and Coastal Northwest Groups (Monaco *et al.* 1992, p. 253). Longfin smelt have been collected from estuaries of all types and classifications.

The Bay-Delta is the largest estuary on the West Coast of the United States (Sommer *et al.* 2007, p. 271). The modern Bay-Delta bears only a superficial resemblance to the historical Bay-Delta. The Bay-Delta supports an estuary covering approximately 1,235 square kilometers (km^2) (477 square miles (mi^2)) (Rosenfield and Baxter 2007, p. 1577), which receives almost half of California's runoff (Lehman 2004, p. 313). The historical island marshes surrounded by low natural levees are now intensively farmed and protected by large, manmade structures (Moyle 2002, p. 32). The watershed, which drains approximately 40 percent of the land area of California, has been heavily altered by dams and diversions, and nonnative species now dominate, both in terms of numbers of species and numbers of individuals (Kimmerer 2004, pp. 7–9). The Bay Institute has estimated that intertidal wetlands in the Delta have been diked and leveed so extensively that approximately 95 percent of the 141,640 hectares (ha) (350,000 acres (ac)) of tidal wetlands that existed in 1850 are gone (The Bay Institute 1998, p. 17).

The physical and biological characteristics of the estuary define longfin smelt habitat. The Bay-Delta is unique in that it contains significant amounts of tidal freshwater (34 km^2 (13 mi^2)) and mixing zone (194 km^2 (75 mi^2)) habitat (Monaco *et al.* 1992, pp. 254–255, 258). San Francisco Bay is relatively shallow and consists of a northern bay that receives freshwater inflow from the Sacramento-San Joaquin system and a southern bay that receives little freshwater input (Largier 1996, p. 69). Dominant fish species are highly salt-tolerant and include the commercially important Pacific sardine (*Sardinops sagax*) and rockfish (*Sebastes* spp.). Major habitat types include riverine and tidal wetlands, mud flat, and salt marsh, with substantial areas of diked wetland managed for hunting. The sandy substrates that longfin smelt are presumed to use for spawning are abundant in the Delta.

The Russian River collects water from a drainage area of approximately 3,846 km^2 (1,485 mi^2), has an average annual discharge of 1.6 million acre-feet, and is approximately 129 km (80 mi) in length (Langridge *et al.* 2006, p. 4). Little information is available on potential spawning and rearing habitat for longfin smelt, but it is likely to be both small and ephemeral because spawning and rearing habitat is highly dependent upon freshwater inflow, and there may be insufficient freshwater flows for spawning and rearing in some years (Moyle 2010, p. 5). A berm encloses the mouth of the Russian River during certain times of the year, essentially cutting it off from the coastal ocean. This results in a lack of connectivity with the ocean that could be important during dry years. However, in most years the berm is breached by freshwater flows, which allows longfin smelt to enter the Russian River and spawn.

The Eel River drains an area of 3,684 mi^2 (9,542 km^2) and is the third largest river in California. Wetlands and tidal areas have been reduced 60 to 90 percent since the 1800s (Cannata and Hassler 1995, p. 1), resulting in changes in tidal influence and a reduction in channel connectivity (Downie 2010, p. 15). The estuary is characterized by a small area where freshwater and saltwater mix (Monaco *et al.* 1992, p. 258) and thus provides only limited potential longfin rearing habitat.

Humboldt Bay is located only 26 km (16 mi) north of the Eel River and is approximately 260 mi (418 km) north of the Bay-Delta. Humboldt Bay is the second largest coastal estuary in California after the Bay-Delta. However, true estuarine conditions rarely occur in Humboldt Bay because it receives limited freshwater input and experiences little mixing of freshwater and saltwater (Pequegnat and Butler 1982, p. 39).

The Klamath Basin has been extensively modified by levees, dikes, dams, and the draining of natural water bodies since the U.S. Bureau of Reclamation's Klamath Project, designed to improve the region's ability to support agriculture, began in 1905. These changes to the system have altered the biota of the basin (NRC 2008, p. 16). Over the years, loss of thousands of acres of connected wetlands and open water in the Klamath River Basin has greatly reduced habitat value, likely depleting the ability of this area to cycle nutrients and affecting water quality (USFWS 2008, p. 55). The river drains a vast area of 10 million ac (4 million ha). Although a large river, the Klamath River estuary is characterized by small tidal freshwater and mixing zones (Monaco *et al.* 1992, p. 258) and thus provides limited potential longfin smelt rearing habitat.

Yaquina Bay is located on the mid-coastal region of Oregon, 201 km (125 mi) south of the Columbia River and 348 km (216 mi) north of the California border. Wetlands encompass 548 ha (1,353 ac), including 216 ha (534 ac) of mud flats and 331 ha (819 ac) of tidal marshes (Yaquina Bay Geographic Response Plan 2005, p. 2.1). Forty-eight percent of the estuary is intertidal (Brown *et al.* 2007, p. 6). The estuary has been modified greatly, being alternately dredged and filled at different locations as a result of development. Dredging, industrial, and residential uses have reduced fish habitat and water quality in the bay. Dredging disturbs sediment, resulting in increased turbidity and reduced sunlight penetration, which can impact native eelgrasses and the benthic species dependent eelgrass beds for breeding, spawning, and shelter (Oberrecht 2011, pp. 1–8).

On the Columbia River, dams, dikes, maintenance dredging, and urbanization have all contributed to habitat loss and alterations that have negatively affected fish and wildlife populations (Lower Columbia River Estuary Partnership 2011, p. 1). It is estimated that as much as 43 percent of estuarine tidal marshes and 77 percent of tidal swamps in the river estuary available for fish species have been lost since 1870 (Columbia River Estuary Study Taskforce 2006, pp. 1–30). Sixty square miles of peripheral tidal habitat have been lost to diking, filling, and conversion to upland habitat for industrial and agricultural use since 1870 (Columbia River Estuary Study Taskforce 2006, p. 1). Prior to construction of dams, estuary islands and much of the floodplain were inundated throughout the year, beginning in December and again in May or June. Dam operations on the Columbia River's main stem and major tributaries have substantially reduced peak river flows. Dikes and levees have all but eliminated flooding in many low-lying areas. Dredging of shipping channels has caused loss of wetlands and altered shoreline configuration. Dredging has resulted in large sediment reductions upstream, and the dredged sediments have created islands downstream. This has likely reduced spawning habitat and sheltering sites for fish (OWJP 1991, pp. 1–24; Lower Columbia Fish Recovery Board 2004a, pp. 1–192).

Puget Sound is a large saltwater estuary of interconnected flooded glacial valleys located at the northwest corner of the State of Washington. Puget Sound is about 161 km (100 mi) long, covers about 264,179 ha (652,800 ac), and has over 2,092 km (1,300 mi) of shoreline. Fed by streams and rivers from the Olympic and Cascade Mountains, waters flow out to the

Pacific Ocean through the Strait of Juan de Fuca (Lincoln 2000, p. 1). The basin consists of eight major habitat types, the largest of which is kelp and eelgrass, but also includes wetlands, mudflats, and sandflats. Puget Sound consists of five regions, each with its own physical and biological characteristics. Urban and industrial development borders the main basin, which is bounded by Port Townsend on the north and the Narrows (Tacoma) on the south. Approximately 30 percent of freshwater inflow to the main basin is from the Skagit River, which drains an area of approximately 8,011 km² (3,093 mi²). Sills at Admiralty Inlet and the Narrows influence circulation. Puget Sound is highly productive. The fish community includes many commercially important species, such as Pacific herring, Pacific salmon, and several species of rockfish (NOAA 2011c, p. 11). There are 10 major dams and thousands of small water diversions in the Puget Sound system (Puget Sound Partnership 2008b, p. 21). Human activities in the region have resulted in the loss of 75 percent of the saltwater marsh habitat and 90 percent of the estuarine and riverine wetlands (Puget Sound Partnership 2008b, p. 21).

The coastline of British Columbia has been shaped by plate tectonics and extensive glaciations. Particularly in summer, prevailing winds drive coastal upwelling, which results in a highly productive food chain. The tidal amplitude is 3–5 meters (m) (9.8–16.4 ft) in most areas, and numerous large and small rivers provide freshwater inflow. Biological communities are diverse and highly variable, including coastal wetlands, kelp beds, and seaweed beds that support a diverse marine fauna (Dale 1997, pp. 13–15). Nearshore areas of British Columbia are characterized by steep to moderately sloping fjords, 20–50 m (65–164 ft) in depth, with salinities ranging from 18 to 28 ppt (AXYS Environmental Consulting 2001, pp. 5, 11, 20). Bar-built estuaries that are semi-enclosed by an ocean-built bar occur on the west coast of Vancouver Island and the Queen Charlotte Islands (Emmett *et al.* 2000, pp. 769–770). Oxygen depletion is common in fjords (Emmett *et al.* 2000, p. 776), but because they are anadromous, longfin smelt would presumably be able to avoid those conditions. However, if depletion were to occur during spawning or rearing, recruitment could be affected.

The Fraser River, at approximately 1,375 miles (2,213 km), is the longest river in British Columbia and the tenth longest river in Canada. The Fraser River drains an area of 220,000 km² and flows to the Strait of Georgia at the City of Vancouver before it drains into the Pacific Ocean. Diking and drainage in the lower basin area have reduced the extent of estuarine wetlands that are important to the longfin smelt and other fishes that utilize these areas (Blomquist 2005, p. 8).

Habitat types common in Alaskan estuaries include eel grass beds, understory kelp, sand and gravel beds, and bedrock outcrops (NOAA 2011d). Shallow nearshore areas provide a mosaic of habitat types that support a variety of fishes (NOAA 2005, p. 59). In southwestern Alaska, the related osmerid species capelin (*Mallotus villosus*) was found to occur in sand-and-gravel habitats, and the surf smelt (*Hypomesus pretiosus*) was found to occur in bedrock habitats (NOAA 2005, pp. 27, 29). As in British Columbia, if oxygen depletion occurs in fjord habitats during spawning or rearing, longfin smelt recruitment could be affected.

Cook Inlet is a large mainland Alaskan estuary located in the northern Gulf of Alaska. Cook Inlet is approximately 290 km (180 miles) long. The watershed covers about 100,000 km² of southern Alaska (USACE 2011, p. 1).

Distribution

Longfin smelt are widely distributed along 3,541 km (2,200 mi) of Pacific coastline from the Bay-Delta to Cook Inlet, Alaska (Table 1). We found no evidence of range contraction; the current distribution of longfin smelt appears to be similar to its historical distribution.

TABLE 1—KNOWN OCCURRENCES OF LONGFIN SMELT

State	Location	Reference
California	Monterey Bay	Eschmeyer 1983, p. 82; Wang 1986, pp. 6–10).
	Bay-Delta	Eschmeyer 1983, p. 82; Wang 1986, pp. 6–10.
	Offshore Bay-Delta	City of San Francisco 1993, p. 5–8.
	Russian River Estuary	Cook 2010, pers. comm.
	Van Duzen River	Moyle 2002, p. 235.
	McNulty Slough of Eel River	CDFG 2010, unpublished data.
	Offshore Humboldt Bay	Quirollo 1994, pers. comm.
	Humboldt Bay and tributaries	CDFG 2010, unpublished data.
	Mad River	Moyle 2002, p. 235.
	Klamath River	Kisanuki *et al.* 1991, p. 72, CDFG 2009, p. 5.
	Lake Earl	D. McLeod field note 1989 (Cannata and Downie 2009).
Oregon	Coos Bay	Veroujean 1994, p. 1.
	Yaquina Bay	ODFW 2011, pp. 1–3, ANHP 2006, p. 3.
	Tillamook Bay	Ellis 2002, p. 17.
	Columbia River Estuary	ODFW 2011, pp. 1–3.
Washington	Willapa Bay	WDFW 2011, pp. 1–3.
	Grays Harbor	U.S. Army Corps of Engineers 2000, p. 2.
	Puget Sound Basin	Miller and Borton 1980, p. 17.4.
	Lake Washington	Chigbu and Sibley 1994, p. 1.
British Columbia	Fraser River	Fishbase 2011a, p. 1; Fishbase 2011b, p. 1.
	Pitt Lake	Taylor 2011, pers. comm.
	Harrison Lake	Page and Burr 1991, p. 57.
	Vancouver	Hart 1973, p. 147.
	Prince Rupert	Hart 1973, p. 147.
	Skeena Estuary	Kelson 2011, pers. comm.
Alaska	Dixon Entrance	Alaska Natural Heritage Program 2006, p. 3.
	Sitka National Historical Park	NPS 2011, p. 1.
	Glacier Bay	Arimitsu 2003, pp. 35, 41.
	Klondike Gold Rush National Historical Park	NPS 2011, p. 1.

TABLE 1—KNOWN OCCURRENCES OF LONGFIN SMELT—Continued

State	Location	Reference
	Yakutat Bay	Alaska Natural Heritage Program 2006, p. 3.
	Wrangell-St. Elias National Park	Arimitsu 2003, pp. 35, 41, NPS 2011, p. 1.
	Cook Inlet	NOAA 2010b, p. 4, NOAA 2010a, p. 8.
	Kachemak Bay	Abookire *et al.* 2000, NPS 2011, p. 1.
	Hinchinbrook Island	Alaska Natural Heritage Program 2006, p. 3.
	Lake Clark National Park and Preserve	NPS 2011, p. 1.
	Prince William Sound	Alaska Natural Heritage Program 2006, p. 3.

California

The southernmost known population of longfin smelt is the Bay-Delta estuary, and longfin smelt occupy different habitats of the estuary at various stages in their life cycle (See Habitat section above). Eschmeyer (1983, p. 82) reported the southern extent of the range as Monterey Bay, and Wang (1986, pp. 6–10) reported that an individual longfin smelt had been captured at Moss Landing in Monterey Bay in 1980. Most sources, however, identify the Bay-Delta as the southern extent of the species' range (Moyle 2002, p. 235).

Small numbers of longfin were collected within the Russian River estuary each year between 1997 and 2000 (SCWA 2001, p. 18). No surveys were conducted in 2001 or 2002 (Cook 2011, pers. comm.). Recent surveys (since 2003) in the Russian River estuary conducted by Sonoma County Water Agency have not collected longfin smelt; however, in 2003, trawling surveys were replaced by beach seining, a type of survey less likely to capture a pelagic fish species such as the longfin smelt. Longfin smelt breeding has not been documented at the Russian River (Baxter 2011b, pers. comm.), and because of its limited size, the Russian River estuary is not believed to be capable of supporting a self-sustaining longfin smelt population (The Bay Institute *et al.* 2007, p. ii; Moyle 2010, p. 5).

Longfin smelt were observed spawning in the Eel River estuary in 1974 (Puckett 1977, p. 19). Although longfin were observed in the Eel River in 2008 and 2009 (Cannata and Downie 2009), it is unknown whether or not they currently spawn there. Humboldt Bay is located 420 km (260 mi) north of the Bay-Delta. Longfin smelt were collected in Humboldt Bay or its tributaries every year from 2003 to 2009, with the exception of 2004 (CDFG 2010, unpublished data). Longfin smelt also have been observed in coastal waters adjacent to Humboldt Bay (Quirollo 1994, pers. comm.). The Humboldt Bay population is thought to be the nearest known breeding population to the Bay-Delta (Baxter 2011b, pers. comm.). Longfin smelt were collected consistently in the Klamath River estuary between 1979 and 1989 (Kisanuki *et al.* 1991, p. 72), and one longfin smelt was collected in the Klamath River in 2001 (CDFG 2009, p. 5).

Oregon

In Oregon, there are historical records of longfin smelt in Tillamook Bay, Columbia River, Coos Bay, and Yaquina Bay (ANHP 2006, p. 3). One individual was detected in Tillamook Bay in 2000 (Ellis 2002, p. 17). Williams *et al.* (2004, p. 30) collected 308 longfin in the Columbia River estuary in 2004. Longfin smelt were reported in the Columbia River estuary, the coastal waters adjacent to the Columbia River, and in Yaquina Bay in 2009 (Nesbit 2011, pers. comm.). In Coos Bay, longfin smelt were detected in low numbers in the early 1980s. However, longfin smelt do not appear to be common in Coos Bay and were not detected during sampling that occurred in the 1970s and the late 1980s (Veroujean 1994, no pagination).

Washington

In Washington, within the Puget Sound Basin, longfin smelt are known to occur in the Nooksack River, Bellingham Bay, Snohomish River, Duwamish River, Skagit Bay, Strait of San Juan de Fuca, Twin River, and Pysht River (Table 1). Longfin smelt are known to occur in nearby Bellingham Bay (Penttila 2007, p. 4). Longfin smelt were collected in the Snohomish River estuary during extensive beach seine and fyke trapping in 2009 (Rice 2010, pers. comm.). Longfin smelt were captured (reported as non-target) in high-rise otter trawls in the lower Duwamish River (Anchor and King County 2007, p. 11). Longfin smelt are common in the Strait of San Juan de Fuca (Penttila 2007, p. 4). Miller *et al.* (1980, p. 28) found longfin smelt to be the second most common species in tow-net surveys conducted in the Strait of San Juan de Fuca. Most fish caught in these surveys were young of the year and were found near the Twin and Pysht Rivers, both of which may have suitable spawning grounds (Miller *et al.* 1980, p. 28). Occurrences of longfin smelt within northern Puget Sound and the Strait of Georgia may reflect the abundance and distribution of the anadromous populations from the Fraser River in British Columbia (Washington Department of Fish and Wildlife 2011, pp. 1–3). Currently, the National Park Service states that longfin smelt are probably present within Olympic National Park (NPS 2011, p. 1). Longfin smelt appear to be common in Grays Harbor (U.S. Army Corps of Engineers 2000, p. 2). Longfin smelt have been infrequently documented in the upper Chehalis estuary at Cosmopolis; however, when they do occur, they have been reported as abundant (Anderson 2011). Ocean trawls off Willapa Bay have collected longfin smelt, although no spawning population has been identified in the basin (Anderson 2011).

A resident, freshwater population of longfin smelt occurs in Lake Washington (Chigbu and Sibley 1994, p. 1). First caught in 1959, it is believed that the longfin smelt either were introduced to the lake or became trapped during canal construction (Chigbu *et al.* 1998, p. 180). In the 1960s, the abundance of longfin smelt in Lake Washington was low but increased to higher levels in the 1980s (Chigbu and Sibley 1994, p. 4).

British Columbia

Longfin smelt populations occur in Pitt Lake and Harrison Lake in British Columbia (Page and Burr 1991, p. 57; Taylor 2011, pers. comm.); these populations are believed to be resident fish that are not anadromous (that is, they are thought to complete their entire life cycle in freshwater). Pitt Lake is located approximately 64 river km (40 mi) up the Fraser and Pitt Rivers, and Harrison Lake is located approximately 121 river km (75 mi) up the Fraser and Harrison Rivers. Longfin smelt are known to occur within the Fraser River near Vancouver (Hart 1973, p. 147; Fishbase 2011a, p. 1; Fishbase 2011b, p. 1). Longfin smelt are also known to occur in the Skeena River estuary near

Prince Rupert (Hart 1973, p. 147; Kelson 2011, pers. comm.; Gottesfeld 2002, p. 54).

Alaska

In Alaska, longfin smelt are known from Hinchinbrook Island, Prince William Sound, Dixon Entrance, Yakutat Bay, and Cook Inlet (Alaska Natural Heritage Program 2006, p. 3). In nearly 1,000 recent beach seine surveys in Alaska, longfin smelt have only been caught off Fire Island in upper Cook Inlet in 2009 and 2010 (NOAA 2010b, p. 4; Johnson 2010, pers. comm.; Wing 2010, pers. comm.). However, as stated earlier, longfin smelt are unlikely to be caught in beach seine surveys because they are a pelagic species and do not typically occur near shore where beach seine surveys take place. Surveys in Prince William Sound did not collect longfin smelt in 2006 or 2007 (NOAA 2011, p. 1). Longfin smelt were collected in Wrangell-St. Elias National Park and Glacier Bay in 2001 and 2002 (Arimitsu 2003, pp. 35, 41). Longfin were collected in Kachemak Bay in 1996–1998 seine and trawling surveys (Abookire *et al.* 2000). The NPS was not able to confirm presence or absence in Lake Clark National Park and Preserve. The NPS concludes that presence is probable in Glacier Bay National Park and Preserve, Klondike Gold Rush National Historical Park, Sitka National Historical Park, and Wrangell-St. Elias National Park and Preserve (NPS 2011, p. 1).

Abundance

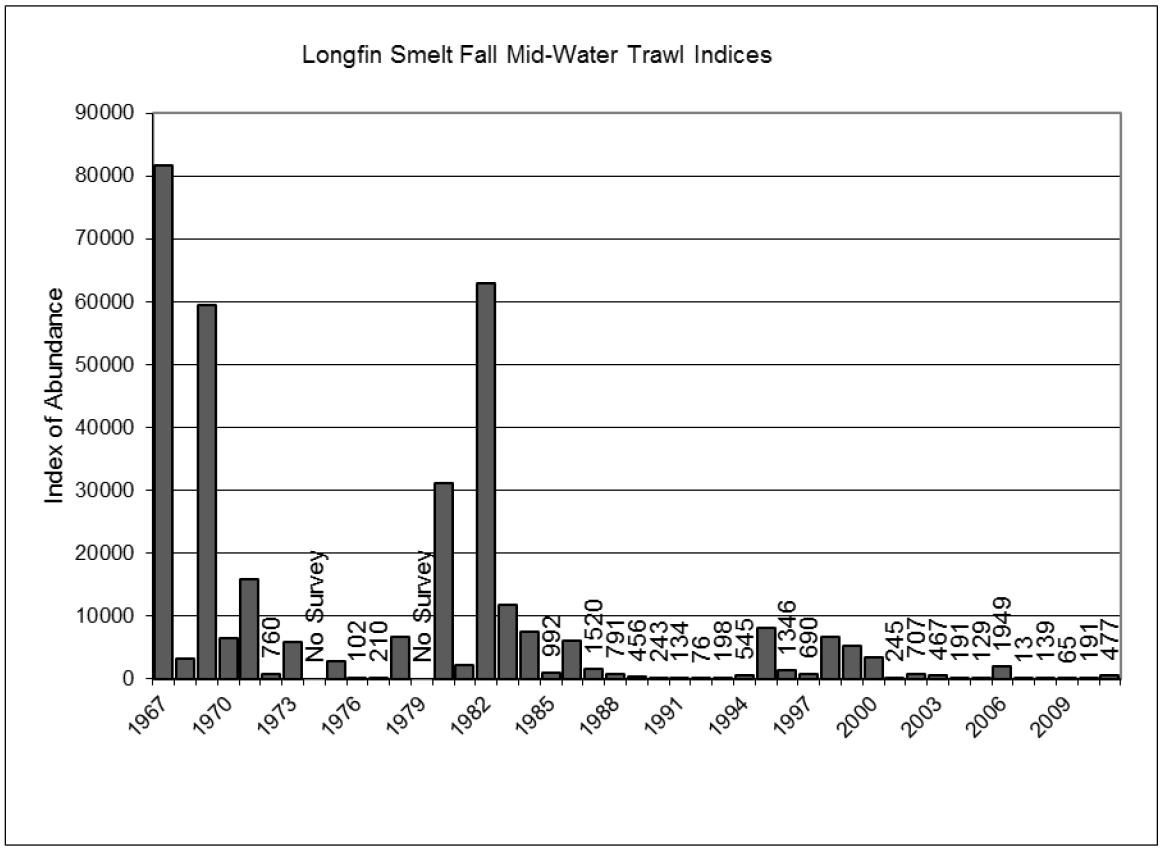
In most locations throughout their range, longfin smelt populations have not been monitored. Within the Bay-Delta, longfin smelt are consistently collected in the monitoring surveys that have been conducted by CDFG as far back as the late 1960s. We know of no similar monitoring data for other longfin smelt populations. CDFG did report catches of longfin smelt in Humboldt Bay from surveys conducted between 2003 and 2009; small numbers of longfin were collected each of the years except 2004 (CDFG 2010, unpublished data). Moyle (2002, p. 237; 2010, p. 4) noted that the longfin smelt population in Humboldt Bay appeared to have declined between the 1970s and 2002, but survey data are not available from that time.

Longfin smelt numbers in the Bay-Delta have declined significantly since the 1980s (Moyle 2002, p. 237; Rosenfield and Baxter 2007, p. 1590; Baxter *et. al.* 2010, pp. 61–64). Rosenfield and Baxter (2007, pp. 1577–1592) examined abundance trends in longfin smelt using three long-term data sets (1980–2004) and detected a significant decline in the Bay-Delta longfin smelt population. They confirmed the positive correlation between longfin smelt abundance and freshwater flow that had been previously documented by others (Stevens and Miller 1983, p. 432; Baxter *et al.* 1999, p. 185; Kimmerer 2002b, p. 47), noting that abundances of both adults and juveniles were significantly lower during the 1987–1994 drought than during either the pre- or post-drought periods (Rosenfield and Baxter 2007, pp. 1583–1584).

Despite the correlation between drought and low population in the 1980s and 90s, the declines in the first decade of this century appear to be caused in part by additional factors. Abundance of longfin smelt has remained very low since 2000, even though freshwater flows increased during several of these years (Baxter *et al.* 2010, p. 62). Abundance indices derived from the Fall Midwater Trawl (FMWT), Bay Study Midwater Trawl (BSMT), and Bay Study Otter Trawl (BSOT) all show marked declines in Bay-Delta longfin smelt populations from 2002 to 2009 (Messineo *et al.* 2010, p. 57). Longfin smelt abundance over the last decade is the lowest recorded in the 40-year history of CDFG's FMWT monitoring surveys. Scientists became concerned over the simultaneous population declines since the early 2000s of longfin smelt and three other Bay-Delta pelagic fish species—delta smelt (*Hypomesus transpacificus*), striped bass (*Morone saxatilis*), and threadfin shad (*Dorosoma petenense*) (Sommer *et al.* 2007, p. 273). The declines of longfin smelt and these other pelagic fish species in the Bay-Delta since the early 2000s has come to be known as the Pelagic Organism Decline, and considerable research efforts have been initiated since 2005, to better understand causal mechanisms underlying the declines (Sommer *et al.* 2007, pp. 270–277; MacNally *et al.* 2010, pp. 1417–1430; Thomson *et al.* 2010, pp. 1431–1448). The population did increase in the 2011 FMWT index to 477 (Contreras 2011, p. 2), probably a response to an exceptionally wet year.

The FMWT index of abundance in the Bay-Delta shows great annual variation in abundance but a severe decline over the past 40 years (Figure 2). The establishment of the overbite clam (*Corbula amurensis*) in the Bay-Delta in 1987 is believed to have contributed to the population decline of longfin smelt (See Factor E: Introduced Species, below), as well as to the declining abundance of other pelagic fish species in the Bay-Delta (Sommer *et al.* 2007, p. 274). Figure 2 shows low values of the abundance index for longfin smelt during drought years (1976–1977 and 1986–1992) and low values overall since the time that the overbite clam became established in the estuary.

FIGURE 2. Longfin smelt abundance (total across year-classes) as indexed by the Fall Mid-Water Trawl of the Bay-Delta, 1967–2011.



* The survey was not conducted in 1974 or 1979.

** Index values for years of very low abundance were added.

Using data from 1975–2004 from the FMWT survey, Rosenfield and Baxter 2007 (p. 1589) found that longfin smelt exhibit a significant stock-recruitment relationship—abundance of juvenile (age-0) fish is directly related to the abundance of adult (age-1) fish from the previous year. They found that the abundance of juvenile fish declined by 90 percent during the time period analyzed. Rosenfield and Baxter (2007, p. 1589) also found a decline in age-1 individuals that was significant even after accounting for the decline in the age-0 population. If unfavorable environmental conditions persist for one or more years, recruitment into the population could be suppressed, affecting the species' ability to recover to their previous abundance. The current low abundance of adult longfin smelt within the Bay-Delta could reduce the ability of the species to persist in the presence of various threats.

Conservation Actions

Bay-Delta

The CALFED program existed as a multi-purpose (water supply, flood protection, and conservation) program with significant ecosystem restoration and enhancement elements. Implemented by the California Bay-Delta Authority, the program brought together more than 20 State and Federal agencies to develop a long-term comprehensive plan to restore ecological health and improve water management for all beneficial uses in the Bay-Delta system. The program specifically addressed ecosystem quality, water quality, water supply, and levee system integrity. The California Bay-Delta Authority was replaced in 2009 by the Delta Stewardship Council, but many of its programs continue to be implemented and are now housed within the CALFED program's former member agencies.

The CALFED Ecosystem Restoration Program (ERP) developed a strategic plan for implementing an ecosystem-based approach for achieving conservation targets (CALFED 2000a, pp. 1–3). The CDFG is the primary implementing agency for the ERP. The goal of ERP in improving conditions for longfin smelt will carry forward, irrespective of the species Federal listing status. CALFED had an explicit goal to balance the water supply program elements with the restoration of the Bay-Delta and tributary ecosystems and recovery of the longfin smelt and other species. Because achieving the diverse goals of the program is iterative and subject to annual funding by diverse agencies, the CALFED agencies have committed to maintaining balanced implementation of the program within an adaptive management framework. The intention of this framework is that the storage,

conveyance, and levee program elements would be implemented in such a way that the longfin smelt's status would be maintained and eventually improved.

CALFED identified 54 species enhancement conservation measures for longfin smelt, more than half of which have been completed (CALFED Ecosystem Restoration Project 2011, entire). One such restoration action at Liberty Island at the southern end of the Yolo Bypass (a flood control project) has likely benefitted longfin smelt. After years of active agricultural production on Liberty Island, the levees were breached in 1997, and the island was allowed to return to a more natural state (Wilder 2010, slide 4). Wildlands Corporation has recently completed a restoration project removing several levees surrounding Liberty Island and creating 186 acres of various habitats for fish (Wildlands 2011, p. 1). Longfin smelt are utilizing the flooded island, and were collected in a number of surveys between 2003 and 2005 (Liberty Island Monitoring Program 2005, pp. 42–44; Marshall *et al.* 2006, p. 1).

The Bay-Delta Conservation Plan (BDCP), an effort to help provide restoration of the Bay-Delta ecosystem and reliable water supplies, is currently in preparation by a collaborative of water agencies, resource agencies, and environmental groups. The BDCP is intended to provide a basis for permitting take of listed species under sections 7 and 10 of the Act and the California Natural Communities Conservation Planning Act, and would provide a comprehensive habitat conservation and restoration plan for the Bay-Delta, as well as a new funding source. The BDCP shares many of the same goals outlined in the 2000 CALFED Record of Decision (CALFED 2000) but would not specifically address all listed-species issues. The BDCP would, however, target many of the threats to current and future listed species and could contribute to species recovery. However, the BDCP, if completed, would not be initiated until at least 2013 or later. The plan's implementation is anticipated to extend through 2060.

Humboldt Bay

The Humboldt Bay Watershed Advisory Committee has completed the Humboldt Bay Salmon and Steelhead Conservation Plan with funding from CDFG, National Oceanographic Atmospheric Administration (NOAA), and the California State Coastal Conservancy with the purpose of protecting and restoring salmon habitat in Humboldt Bay through cooperative planning (Humboldt Bay Watershed Advisory Committee 2005, pp. 1–2). Many of the habitat restoration activities proposed may benefit longfin smelt, including restoration in freshwater streams and brackish sloughs. The Natural Resource Services has designed an enhancement program that is based on the Humboldt Bay Salmon and Steelhead Conservation Plan. Natural Resource Services has completed a tidal marsh enhancement project on Freshwater Creek and has other projects in the design stage (Don Allen 2011, pers. comm.). The Natural Resource Services is a division of the Redwood Community Action Agency dedicated to improving the health of northern California communities and the watersheds that they depend on (NRS 2011, p. 1). These types of restoration efforts are current and ongoing and may benefit longfin smelt by increasing access to intertidal areas within Humboldt Bay.

Puget Sound

The Puget Sound Partnership is a Washington State Agency created in 2007, to oversee the restoration and protection of Puget Sound. The Puget Sound Partnership created an Action Agenda that identifies and prioritizes work needed to protect and restore Puget Sound (Puget Sound Partnership 2008b, p. 2). Protection actions including local watershed planning, shoreline management planning, and citizen involvement through groups such as beach watchers and shore stewards are among the current restoration efforts in Puget Sound watershed (Puget Sound Partnership 2008a, pp. 1–2). These measures are expected to benefit longfin smelt by protecting and restoring habitat through legislative approval and funding for land acquisition for protection and restoration of ecologically important lands and habitats and by adding lands to State Aquatic Reserves program (Puget Sound Partnership 2008a, pp. 1–2).

Alaska

State and Federal land ownership affords protection for vast distances of shoreline within Glacier Bay and Wrangell-St. Elias National Parks, Tongass National Forest, and State landholdings. Kachemak Bay, located near the mouth of lower Cook Inlet, is a National Estuarine Research Reserve regarded as extremely important for marine biodiversity conservation (ADFG 2006, pp. 133–134). Alaska's only State wilderness park, Kachemak Bay State Park, is also located in Kachemak Bay (ADNR 2011, p. 1). Yakutat Bay lies between peninsular and mainland Alaska and is bordered by Wrangell-St. Elias National Park to the northwest and Tongass National Forest. The Federal lands surrounding Yakutat Bay protect it from the effects of development. The Tongass National Forest management plan requires that logging activities be distanced from estuarine and riparian edges (ADFG 2006, p. 107). As a species group, the osmerids are identified in Alaska's Comprehensive Wildlife Conservation Strategy as Species of Greatest Conservation Need (ADFG 2006, pp. 140–143). The Conservation Action Plan for anadromous smelts identifies objectives, issues, and conservation actions to address information gaps. Determining life history, trophic ecology, instream flow and habitat needs, and monitoring protocols are included as measures that need to be undertaken as part of Alaska's Conservation Strategy to identify conservation status and needs of anadromous smelt including longfin.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making these findings, information pertaining to each species in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species such that the species warrants listing as

endangered or threatened as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat has the capacity (i.e., it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

In making our 12-month finding on the petition, we considered and evaluated the best available scientific and commercial information. Much of the scientific and commercial information available on potential threats to longfin smelt comes from information on the Bay-Delta, and therefore the threats analysis is largely focused on the Bay-Delta longfin smelt population.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Potential threats to longfin smelt habitat include the effects of reduced freshwater flow, climate change, and channel disturbance. Nearly all information available on Factor A threats to longfin smelt come from the Bay-Delta estuary. Therefore, our analysis below focuses on habitat impacts to the Bay-Delta population.

Reduced Freshwater Flow

Most longfin smelt populations, other than those in a few freshwater lakes in Washington and British Columbia, are known from estuaries. Estuaries are complex ecosystems with boundaries between freshwater, brackish water, and saltwater that vary in time and space. Drought and water diversions affect these boundaries by altering the amounts and timing of freshwater flow into and within the estuary. These altered freshwater flows affect the physical and biological characteristics of the estuary, and the physical and biological characteristics of the estuary define longfin smelt habitat.

Many environmental attributes respond to variance in freshwater flow into the estuary, including patterns of flooding and drought, nutrient loading, sediment loading (turbidity), concentration of organic matter and planktonic biota, physical changes in the movement and compression of the salt field, and changes in the hydrodynamic environment (Kimmerer 2002a, p. 40). The San Francisco Estuary exhibits one of the strongest and most consistent responses of biota to flow among large estuaries (Kimmerer 2004, p. 14).

Reduced freshwater flows into estuaries may affect fish and other estuarine biota in multiple ways. Effects may include: (1) Decreased nutrient loading, resulting in decreased primary productivity; (2) decreased stratification of the salinity field, resulting in decreased primary productivity; (3) decreased organic matter loading and deposition into the estuary; (4) reduced migration cues; (5) decreased sediment loading and turbidity, which may affect both feeding efficiency and predation rates; (6) reduced dilution of contaminants; (7) impaired transport to rearing areas (e.g., low-salinity zones); and (8) reduction in physical area of, or access to, suitable spawning or rearing habitat (Kimmerer 2002b, p. 1280).

Bay-Delta Population

Freshwater flow is strongly related to the natural hydrologic cycles of drought and flood. In the Bay-Delta estuary, increased Delta outflow during the winter and spring is the largest factor positively affecting longfin smelt abundance (Stevens and Miller 1983, pp. 431–432; Jassby *et al.* 1995; Sommer *et al.* 2007, p. 274; Thomson *et al.* 2010, pp. 1439–1440). During high outflow periods, larvae presumably benefit from increased transport and dispersal downstream, increased food production, reduced predation through increased turbidity, and reduced loss to entrainment due to a westward shift in the boundary of spawning habitat and strong downstream transport of larvae (CFDG 1992; Hieb and Baxter 1993; CDFG 2009a). Conversely, during low outflow periods, negative effects of reduced transport and dispersal, reduced turbidity, and potentially increased loss of larvae to predation and increased loss at the export facilities result in lower young-of-the-year recruitment. Despite numerous studies of longfin smelt abundance and flow in the Bay-Delta, the underlying causal mechanisms are still not fully understood (Baxter *et al.* 2010, p. 69; Rosenfield 2010, p. 9).

As California's population has grown, demands for reliable water supplies and flood protection have grown. In response, State and Federal agencies built dams and canals, and captured water in reservoirs, to increase capacity for water storage and conveyance resulting in one of the largest manmade water systems in the world (Nichols *et al.* 1986, p. 569). Operation of this system has altered the seasonal pattern of freshwater flows in the watershed. Storage in the upper watershed of peak runoff and release of the captured water for irrigation and urban needs during subsequent low flow periods result in a broader, flatter hydrograph with less seasonal variability in freshwater flows into the estuary (Kimmerer 2004, p. 15).

In addition to the system of dams and canals built throughout the Sacramento River-San Joaquin River basin, the Bay-Delta is unique in having a large water diversion system located within the estuary (Kimmerer 2002b, p. 1279). The State Water Project (SWP) and Central Valley Project (CVP) operate two water export facilities in the Delta (Sommer *et al.* 2007, p. 272). Project operation and management is dependent upon upstream water supply and export area demands. Despite the size of the water storage and diversion projects, much of the interannual variability in Delta hydrology is due to variability in precipitation from year to year. Annual inflow from the watershed to the Delta is strongly correlated to unimpaired flow (runoff that would hypothetically occur if upstream dams and diversions were not in existence), mainly due to the effects of high-flow events (Kimmerer 2004, p. 15). Water operations are regulated in part by the California State Water Resources Control Board (SWRCB) according to the Water Quality Control Plan (WQCP) (SWRCB 2000, entire). The WQCP limits Delta water exports in relation to Delta inflow (the Export/Inflow, or E/I ratio).

It is important to note that in the case of the Bay-Delta, freshwater flow is expressed as both Delta inflow (from the rivers into the Delta) and as Delta outflow (from the Delta into the lower estuary), which are closely correlated, but not equivalent. Freshwater flow into the Delta affects the location of the low salinity zone and X2 within the estuary. Because longfin smelt spawn in freshwater, they must migrate farther upstream to spawn as flow reductions alter the position of X2 and the low-salinity zone moves upstream (CDFG 2009, p. 17). Longer migration distances into the Bay-Delta make longfin smelt more susceptible to entrainment in the State and Federal water pumps (see Factor E: Entrainment Losses). In periods with greater freshwater flow into the Delta, X2 is pushed farther downstream (seaward); in periods with low flows, X2 is positioned farther landward (upstream) in the estuary and into the Delta. Not only is longfin smelt abundance in the Bay-Delta strongly correlated with Delta inflow and X2, but the spatial distribution of longfin smelt larvae is also strongly associated with X2 (Dege and Brown 2004, pp. 58–60; Baxter *et al.* 2010, p. 61). As longfin hatch into larvae, they move from the areas where they are spawned and

orient themselves just downstream of X2 (Dege and Brown 2004, pp. 58–60). Larval (winter-spring) habitat varies with outflow and with the location of X2 (CDFG 2009, p. 12), and has been reduced since the 1990s due to a general upstream shift in the location of X2 (Hilts 2012, unpublished data). The amount of rearing habitat (salinity between 0.1 and 18 ppt) is also presumed to vary with the location of X2 (Baxter *et al.* 2010, p. 64). However, as previously stated, the location of X2 is of particular importance to the distribution of newly-hatched larvae and spawning adults. The influence of water project operations from November through April, when spawning adults and newly-hatched larvae are oriented to X2, is greater in drier years than in wetter years (Knowles 2002, p. 7).

Research on declines of longfin smelt and other pelagic fish species in the Bay-Delta since 2002 (referred to as Pelagic Organism Decline—see Abundance section, above) have most recently been summarized in the Interagency Ecological Program's 2010 Pelagic Organism Decline Work Plan and Synthesis of Results (Baxter *et al.* 2010, pp. 61–69). While Baxter *et al.* (2010, pp. 17–19) acknowledge significant uncertainties about the causal mechanisms underlying the Pelagic Organism Decline, they have identified reduced Delta freshwater flows as one of several key factors that they believe contribute to recent declines in the abundance of longfin smelt (Baxter *et al.* 2010, pp. 61–69, Figure 5).

Other Populations

Information on effects of reduced freshwater flows on longfin smelt populations other than the Bay-Delta population are lacking. Dams and reservoirs are located in the inland water basins of most of the estuaries where longfin smelt occur. Some of these systems are large and consist of multiple dams and diversions (*e.g.,* Klamath River basin, Columbia River basin). Water diversion systems with dams, canals, and water pipelines located upstream of the estuary may affect longfin smelt aquatic habitat by reducing freshwater flows into the estuary—especially if water is diverted out of the drainage basin—and altering the timing of freshwater flows into the estuary.

Climate Change

''Climate'' refers to an area's long-term average weather statistics (typically for at least 20- or 30-year periods), including the mean and variation of surface variables such as temperature, precipitation, and wind, whereas ''climate change'' refers to a change in the mean and/or variability of climate properties that persists for an extended period (typically decades or longer), whether due to natural processes or human activity (Intergovernmental Panel on Climate Change (IPCC) 2007a, p. 78). Although changes in climate occur continuously over geological time, changes are now occurring at an accelerated rate. For example, at continental, regional, and ocean basin scales, recent observed changes in long-term trends include: a substantial increase in precipitation in eastern parts of North American and South America, northern Europe, and northern and central Asia, and an increase in intense tropical cyclone activity in the North Atlantic since about 1970 (IPCC 2007a, p. 30); and an increase in annual average temperature of more than 2 °F (1.1 °C) across the United States since 1960 (Global Climate Change Impacts in the United States (GCCIUS) 2009, p. 27). Examples of observed changes in the physical environment include: an increase in global average sea level, and declines in mountain glaciers and average snow cover in both the northern and southern hemispheres (IPCC 2007a, p. 30); substantial and accelerating reductions in arctic sea-ice (e.g., Comiso *et al.* 2008, p. 1); and a variety of changes in ecosystem processes, the distribution of species, and the timing of seasonal events (*e.g.,* GCCIUS 2009, pp. 79–88).

The IPCC used Atmosphere-Ocean General Circulation Models and various greenhouse gas emissions scenarios to make projections of climate change globally and for broad regions through the 21st century (Meehl *et al.* 2007, p. 753; Randall *et al.* 2007, pp. 596–599), and reported these projections using a framework for characterizing certainty (Solomon *et al.* 2007, pp. 22–23). Examples include: (1) It is virtually certain there will be warmer and more frequent hot days and nights over most of the earth's land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas, and the frequency of heavy precipitation events will increase over most areas; and (3) it is likely that increases will occur in the incidence of extreme high sea level (excludes tsunamis), intense tropical cyclone activity, and the area affected by droughts (IPCC 2007b, p. 8, Table SPM.2). More recent analyses using a different global model and comparing other emissions scenarios resulted in similar projections of global temperature change across the different approaches (Prinn *et al.* 2011, pp. 527, 529).

All models (not just those involving climate change) have some uncertainty associated with projections due to assumptions used, data available, and features of the models; with regard to climate change this includes factors such as assumptions related to emissions scenarios, internal climate variability, and differences among models. Despite this, however, under all global models and emissions scenarios, the overall projected trajectory of surface air temperature is one of increased warming compared to current conditions (Meehl *et al.* 2007, p. 762; Prinn *et al.* 2011, p. 527). Climate models, emissions scenarios, and associated assumptions, data, and analytical techniques will continue to be refined, as will interpretations of projections, as more information becomes available. For instance, some changes in conditions are occurring more rapidly than initially projected, such as melting of arctic sea ice (Comiso *et al.* 2008, p. 1; Polyak *et al.* 2010, p. 1797), and since 2000 the observed emissions of greenhouse gases, which are a key influence on climate change, have been occurring at the mid- to higher levels of the various emissions scenarios developed in the late 1990s and used by the IPPC for making projections (*e.g.,* Raupach *et al.* 2007, Figure 1, p. 10289; Manning *et al.* 2010, Figure 1, p. 377; Pielke *et al.* 2008, entire). Also, the best scientific and commercial data available indicate that average global surface air temperature is increasing and that several climate-related changes are occurring and will continue for many decades even if emissions are stabilized soon (*e.g.* Meehl *et al.* 2007, pp. 822–829; Church *et al.* 2010, pp. 411–412; Gillett *et al.* 2011, entire).

Changes in climate can have a variety of direct and indirect impacts on species, and can exacerbate the effects of other threats. Rather than assessing ''climate change'' as a single threat in and of itself, we examine the potential consequences to species and their habitats that arise from changes in environmental conditions associated with various aspects of climate change. For example, climate-related changes to habitats, predator-prey relationships, disease and disease vectors, or conditions that exceed the physiological tolerances of a species, occurring individually or in combination, may affect the status of a species. Vulnerability to climate change impacts is a function of sensitivity to those changes, exposure to those changes, and adaptive capacity (IPCC 2007, p. 89;

Glick *et al.* 2011, pp. 19–22). As described above, in evaluating the status of a species, the Service uses the best scientific and commercial data available, and this includes consideration of direct and indirect effects of climate change. As is the case with all potential threats, if a species is currently affected or is expected to be affected by one or more climate-related impacts, this does not necessarily mean the species is an endangered or threatened species as defined under the Act. If a species is listed as endangered or threatened, this knowledge regarding its vulnerability to, and impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

The effects of climate change do not act in isolation, but act in combination with existing threats to species and systems. We considered the potential effects of climate change on the longfin smelt based on projections derived from various modeling scenarios. Temperature increases are likely to lead to a continued rise in sea level, further increasing salinity within longfin smelt estuarine rearing habitat and likely shifting spawning and early rearing upstream as the boundary of fresh and brackish water moves upstream (Baxter 2011, pers. comm.). Reduced snowpack, earlier melting of the snowpack, and increased water temperatures will likely alter freshwater flows, possibly shifting and condensing the timing of longfin smelt spawning (Baxter 2011, pers. comm.).

Effects of climate change could be particularly profound for aquatic ecosystems and include increased water temperatures and altered hydrology, along with changes in the extent, frequency, and magnitude of extreme events such as droughts, floods, and wildfires (Reiman and Isaak 2010, p. 1). Numerous climate models predict changes in precipitation frequency and pattern in the western United States (IPCC 2007b, p. 8). Projections indicate that temperature and precipitation changes will diminish snowpack, changing the availability of natural water supplies (USBR 2011, p. 143). Warming may result in more precipitation falling as rain and less storage as snow. This would result in increased rain-on-snow events and increase winter runoff as spring runoff decreases (USBR 2011, p. 147). Earlier seasonal warming increases the likelihood of rain-on-snow events, which are associated with mid-winter floods. Smaller snowpacks that melt earlier in the year result in increased drought frequency and severity (Rieman and Isaak 2010, p. 6). These changes may lead to increased flood and drought risk during the 21st century (USBR 2011, p. 149).

It is uncertain how a change in the timing and duration of freshwater flows will affect longfin smelt. The melting of the snowpack earlier in the year could result in higher flows in January and February, which are peak spawning and hatching months for longfin smelt. This would reduce adult migration distance and increase areas of freshwater spawning habitat during these months, potentially creating better spawning and larval rearing conditions. Associated higher turbidity may reduce predation on longfin smelt adults and larvae (Baxter 2011, pers. comm.). However, if high flows last only a short period, benefits may be negated by poorer conditions before and after the high flows. As the freshwater boundary moves farther inland into the Delta with increasing sea level (see below) and reduced flows, adults will need to migrate farther into the Delta to spawn, increasing the risk of predation and the potential for entrainment into water export facilities and diversions for both themselves and their progeny.

Global sea level rose at an average rate of 1.8 mm (0.07 in) per year from 1961 to 2003, and at an average rate of 3.1 mm (0.12 in) per year from 1993 to 2003 (IPCC 2007a, p. 49). The IPCC (2007b, p. 13) report estimates that sea levels could rise by 0.18 to 0.58 m (0.6 to 1.9 ft) by 2100; however, Rahmstorf (2007, p. 369) indicated that global sea level rise could increase by over 1.2 m (4 ft) in that time period (CEC 2009, p. 49). Even if emissions could be halted today, the oceans would continue to rise and expand for centuries due to their capacity to store heat (CEC 2009, pp. 49–50). In the Bay-Delta, higher tides combined with more severe drought and flooding events are likely to increase the likelihood of levee failure, possibly resulting in major alterations of the environmental conditions (Moyle 2008, pp. 362–363). It is reasonable to conclude that more severe drought and flooding events will also occur in other estuaries where the longfin smelt occurs. Sea level rise is likely to increase the frequency and range of saltwater intrusion. Salinity within the northern San Francisco Bay is projected to rise 4.5 psu by the end of the century (Cloern *et al.* 2011, p. 7). Elevated salinity levels could push the position of X2 farther up the estuary and could result in increased distances that longfin smelt must migrate to reach spawning habitats. Elevated sea levels could result in greater sedimentation, erosion, coastal flooding, and permanent inundation of low-lying natural ecosystems (CDFG 2009, p. 30).

Typically, longfin smelt spawning in the Bay-Delta occurs at water temperatures between 7.0 and 14.5 °C (44.6–58.2 °F), although spawning has been observed at lower temperatures in other areas, such as Lake Washington (Moyle 2002, p. 236). Mean annual water temperatures within the upper Sacramento River portion of the Bay-Delta estuary are expected to approach or exceed 14 °C during the second half of this century (Cloern *et al.* 2011, p. 7). Increased water temperatures could compress the late-fall to early-spring spawning period and could result in shorter egg incubation time. Longfin smelt are adapted to hatching in cold, relatively unproductive waters where they grow slowly until ample food resources are available in spring. Warmer water during winter would likely result in increased metabolism of larvae, which may result in increased food needs for maintenance and growth and create a mismatch between food needs and availability (Baxter 2011, pers. comm.). If increased water temperatures compress the spawning period and lead to more synchronized hatching during winter, then prevailing low sunlight and low food resources could result in greater intra-specific (within species) competition (Baxter 2011, pers. comm.). Moreover, increasing water temperatures might also lead to earlier spawning and hatching of other fishes, and to greater inter-specific (between species) competition.

Although climate change and sea level rise are projected to result in continued increases in water temperature and salinity, longfin smelt is considered euryhaline (tolerant of a wide range of salinities) (Moyle 2002, p. 236; Rosenfield and Baxter 2007 p. 1578) and is known to move between different parts of the estuary that vary greatly in temperature and salinity. Being able to move between aquatic habitats that vary greatly in water temperature and salinity may reduce the potential impacts of climate change and sea level rise to some degree.

Channel Disturbances

Dredging and other channel disturbances potentially degrade spawning habitat and cause entrainment loss of individual fish and eggs; disposal of dredge spoils also can create large sediment plumes that expose fish to gill-clogging sediments and possibly to decreased oxygen availability (Levine-Fricke 2004, p. 56). Longfin smelt is a pelagic species (living away from the bottom of the water column and

shoreline), and thus less likely to be directly affected by dredging, sand and gravel mining, and other disturbances to the channel bed compared to bottom-dwelling fish species. Longfin smelt are likely most vulnerable to entrainment by dredging during spawning and egg incubation because eggs are deposited and develop on channel bottom substrates (CDFG 2009, p. 27). Egg development takes approximately 40 days (Moyle 2002, p. 236).

We have found no information documenting population impacts of dredging or sand and gravel mining on longfin smelt. Channel maintenance dredging occurs regularly within the Bay-Delta and other estuaries that serve as shipping channels (e.g., Humboldt Bay, Coos Bay, Yaquina Bay, Columbia River). In their 2009 status review on longfin smelt, CDFG concluded that effects of regular maintenance dredging and sand mining within the Bay-Delta estuary on longfin smelt were expected to be small and localized (CDFG 2009, p. 26). They reviewed two studies on entrainment effects of channel dredging, and each study found that no longfin smelt were entrained during dredging (fish that were entrained were primarily bottom-dwelling species).

There is currently a proposal to deepen and selectively widen the Sacramento Deep Water Ship Channel and the lower portion of the Sacramento River in the Bay-Delta. This dredging project would remove between 6.1–7.6 million cubic meters (8 and 10 million cubic yards) of material from the channel and Sacramento River and extend for 74 km (45.8 mi) (USACE 2011a, entire). Potential effects of this new project to longfin smelt include mortality through loss of spawning substrate, habitat modification, and a shift in spawning and rearing habitat. The project also has potential to alter breeding and foraging behavior of the Bay-Delta longfin smelt population. However, this project is only a proposal at this time and is not certain to occur. Potential effects of the proposed project are currently under evaluation.

Summary of Factor A

Although we find that reduced freshwater flows are currently a threat to the Bay-Delta longfin smelt population, it is difficult to make inferences on the effects of reduced freshwater flows to longfin smelt populations throughout the species range. Because the Bay-Delta system includes one of the largest man made water system in the world, it would be impractical to compare diversions and alterations in other estuaries to diversions and alterations in the Bay-Delta. The effects of water development in the Bay-Delta are unique to the physical, geologic, and hydrologic environment of the estuary. Reduced flow from diversions and dams in other estuaries is not expected to be as significant as the reduced flows that have been shown in the Bay-Delta because less water is exported from other estuaries. We have no information to show that reduced freshwater flow is a threat to longfin smelt in other estuaries. Therefore, we conclude that while reduced flow is a threat to the Bay-Delta population of longfin smelt, the best available science does not indicate that the lack of freshwater flow is a threat to the species in other parts of its range.

Climate change will likely affect longfin smelt in multiple ways, but longfin smelt are able to move between a wide range of aquatic environments that vary greatly in water temperature and salinity. These behavioral and physiological characteristics of the species may help it adapt to effects of climate change. We conclude at this time that the best available information does not indicate that climate change threatens the continued existence of longfin smelt across its range.

Channel disturbances may have localized impacts to longfin smelt habitat suitability, but the best available information does not indicate that they pose significant threats to the species throughout its range.

Based on the best available scientific information, we conclude that reduced freshwater flows, climate change, and channel disturbances are not significant current or future threats to longfin smelt across its range except in the Bay-Delta, where reduced freshwater flow is a threat.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Recreational and Commercial Fishing

In California, longfin smelt was listed as a threatened species under the State's Endangered Species Act in 2009. This status makes take of longfin smelt illegal, unless authorized by an incidental take permit or other take authorization. However, longfin smelt are caught as bycatch in small bay shrimp trawl fishery and bait fishing (anchovies and sardines) operations in South San Francisco Bay, San Pablo Bay, and Carquinez Strait (CDFG 2009a, p. 1). CDFG (2009d, pp. 6, 9) estimated the total longfin smelt bycatch from shrimping in 1989 and 1990 at 15,539 fish, and in 2004 at 18,815–30,574 fish. CDFG noted in 2009 that the bay shrimp trawl fishery industry had declined since 2004 (CDFG 2009d, p. 3). No shrimp fishery currently takes place in Humboldt Bay (Mello 2011, pers. comm.).

In Oregon, smelt species may not be targeted in commercial fisheries, and if taken incidentally, smelt catch cannot exceed 1 percent of the total weight landed (ODFW 2011, p. 17). Rules limit in which estuaries bait fishing for herring, sardines, anchovies, and shad may occur. In Oregon, there is currently no known shrimping taking place within the estuaries where the longfin smelt might be found. Although a limited entry roe herring fishery is allowed in Yaquina Bay, no landings have occurred there since 2003, because biomass estimates have generally been too low to make the fishery economically viable (Krutzikowsky 2011, pers. comm.). Anchovy fishing is allowed in Tillamook Bay, Yaquina Bay, and Coos Bay, but because there is currently no anchovy fishing occurring in these areas (Krutzikowsky 2011, pers. comm.), longfin smelt are not taken as bycatch. Records for commercial landings in Oregon show a total of 9.1 kilograms (kg) (20 pounds (lb)) landed from 2005 to 2010 for smelt species other than eulachon. Recreational fishing for smelt species is allowed only in marine waters (Oregon Sport Fishing Regulations, p. 11).

The State of Washington includes longfin smelt in a class of fish referred to as forage fish (small schooling fish that are major food items for many species of fish, birds, and marine mammals) (Bargmann 1998, p. 1). Both recreational and commercial fisheries exist for forage fish in Washington, but the recreational fishery is much smaller than the commercial fishery. A sport fishing license is not needed to catch smelt. Smelt can be harvested recreationally using a dip net or jig. Dip net fishing for longfin smelt is allowed in the Nooksack River and there are approximately two hundred trips a year made to fish for longfin smelt in this area (O'Toole 2011, pers. comm.). It is unlawful to use a herring or smelt rake. Sport and tribal commercial fisheries have been reported to occur on the Nooksack River longfin smelt stock (Bargmann 1998, p. 37). Longfin smelt may be caught incidentally in a medium-sized shore or pier-based recreational fishery for surf smelt in Puget Sound.

There is currently no commercial fishing regulation specific to longfin smelt in Washington (Paulson 2011, pers. comm.). The daily limit for smelt is 4.5 kg (10 lb) and, like Oregon, is counted as an aggregate, which can include herring, sardines, sandlance,

and anchovies (WDFW 2011, p. 27). There is a robust commercial herring fishery in Washington that takes approximately 450 metric tons (500 tons) of fish per year (for sport bait) and a commercial surf smelt fishery that takes approximately 450,000 kg (100,000 lb) of fish per year (for human consumption). Longfin smelt bycatch in both of these fisheries is low. Anchovy fishing in Washington primarily takes place in Grays Harbor and the mouth of the Columbia River (O'Toole 2011, pers. comm.).

In British Columbia, take of smelt from recreational fishing is limited to 20 kilograms (kg) (44 lb) per day and 40 kg (88 lb) of total catch in possession. The fishing season takes place from April 1 to June 14 (Department of Fisheries and Oceans Canada 2011a, p. 47). A commercial fishing industry targeting surf smelt may incidentally take longfin smelt (Department of Fisheries and Oceans Canada 2011b, p. 1). British Columbia supports a year-round shrimp fishery in Prince Rupert and Chatham Sound. Sardine and shrimp fishing occurs near Vancouver.

In Alaska, a commercial fishery for smelt, which includes eulachon, was reopened in 2005. This fishery is restricted to the brackish waters of Cook Inlet, from May 1 to June 30. The total annual harvest of eulachon and longfin smelt may not exceed 90 metric tons (100 tons) of smelt. However, longfin smelt are unlikely to be specifically targeted in this fishery due to their small numbers in relation to eulachon in the region (Shields 2005, p. 4). Sport fishing is limited to salt water, where herring and smelt may be taken (Alaska Department of Fish and Game (ADFG) 2010, p. 1). In Prince William Sound, the herring fishery has closed due to low abundance of herring.

Monitoring Surveys

Fisheries monitoring surveys are conducted by NOAA's National Marine Fisheries Service, the Service and by State and local agencies in water bodies inhabited by longfin smelt throughout their range. Most of these surveys target other species, primarily salmonids, and rarely collect longfin smelt outside of the Bay-Delta area.

Within the Bay-Delta, longfin smelt are regularly captured in monitoring surveys. The Interagency Ecological Program (IEP) implements scientific research in the Bay-Delta. Although the focus of its studies and the level of effort have changed over time, in general, their surveys have been directed at researching the Pelagic Organism Decline in the Bay-Delta. Between the years of 1987 to 2011, combined take of longfin smelt less than 20 mm (0.8 in) in length ranged from 2,405 to 158,588 annually. All of these fish were preserved for research or assumed to die in processing. During the same time period, combined take for juveniles and adults (fish greater than or equal to 20 mm (0.8 in)) ranged from 461 to 68,974 annually (IEP 2011, no pagination). Although mortality is unknown, the majority of these fish likely do not survive. The Chipps Island survey, which is conducted by the Service, has captured an average of 2,697 longfin smelt per year during the past 10 years. Biologists attempt to release these fish unharmed, but at least 5,154 longfin smelt were known to have died during the Chipps Island survey between 2001 and 2008 (Service 2010, entire).

Survey methods have been modified recently to minimize potential impacts to delta smelt, a related species that also occurs in the Bay-Delta (75 FR 17669; April 7, 2010). These modifications are likely to result in reduced impacts to longfin smelt also. The Service conducts other surveys in the Bay-Delta to monitor salmon populations (Mossdale trawl, Sacramento trawl, beach seine surveys), but few longfin smelt are captured during these surveys. Mortality due to monitoring surveys was not identified by the Interagency Ecological Program in its most recent synthesis of results as a factor in the decline of longfin smelt and other pelagic fish species in the Bay-Delta since the early 2000s (Baxter *et al.* 2010, pp. 19–53, 61–69).

Summary of Factor B

The species is incidentally caught in commercial shrimp and bait fishing operations throughout much of its range, but the bycatch numbers are usually low. In California, take of longfin smelt is illegal without authorization because the species is listed as threatened under the California Endangered Species Act. Because of its small size, it is not targeted by recreational angling, although it is certainly caught and used as bait for other larger recreational fish species. Monitoring surveys have resulted in high numbers of longfin smelt mortality in the Bay-Delta in the past, but efforts being made to reduce survey mortality for delta smelt, such as reductions in tow times, likely have also benefitted longfin smelt. The scientific collection surveys being conducted in the Bay-Delta are limited to research designed to benefit the species, and mortality from monitoring surveys has not been identified as a factor in the longfin smelt's recent population decline. We have no information indicating that mortality from monitoring surveys threatens any populations within the species' range. We conclude that overutilization due to commercial, recreational, or scientific take is not a significant current or future threat to the longfin smelt throughout its range.

Factor C. Disease or Predation

Disease

All the information we found on disease in longfin populations originated from studies in the Bay-Delta. Two investigations published in 2006 and 2008 by the California-Nevada Fish Health Center detected no significant health problems in juvenile longfin smelt in the Bay-Delta (Foott and Stone 2008, pp. 15–16). The low observed rate of parasitic infection did not appear to affect the health of the fish, as indicated by the lack of associated tissue damage or inflammation (Foott and Stone 2008, p. 15). The only additional documentation of relevant wild fish disease in the Bay-Delta was a severe intestinal infection by a new species of myxozoan observed in nonnative juvenile yellowfin goby (*Acanthogobius flavimanus*) from Suisun Marsh (Baxa *et al.* in prep cited in Baxter *et al.* 2008, p. 16). The nonnative gobies could act as potential vectors of the parasite to other susceptible species in the Bay-Delta. It is unknown whether this or similar infections are affecting the health of longfin smelt.

The south Delta is fed by water from the San Joaquin River, where pesticides (*e.g.,* chlorpyrifos, carbofuran, and diazinon), salts (e.g., sodium sulfates), trace elements (boron and selenium), and high levels of total dissolved solids are prevalent due to agricultural runoff (64 FR 5963; February 8, 1999). Pesticides and other toxic chemicals may adversely affect the immune system of longfin smelt and other fish in the Bay-Delta and other estuaries, but we found no information documenting such effects (see Factor E: Contaminants, below).

Predation

As a forage species, longfin smelt are preyed upon by a variety of fishes, birds, and mammals (Barnhart *et al.* 1992, p. 44). However, we found little information on predation of longfin smelt other than information for the Bay-Delta population and Lake Washington population. The striped bass (*Morone saxatilis*) is a potential predator of longfin smelt in the Bay-Delta. Striped bass were introduced into the Bay-Delta in 1879 and quickly became abundant throughout the estuary. However, their numbers have

declined substantially over the last 40 years (Thomson *et al.* 2010, p. 1440), and they are one of the four species studied under Pelagic Organism Decline investigations (Baxter *et al.* 2010, p. 16). Numbers of largemouth bass (*Micropterus dolomieui*), another introduced species in the Bay-Delta, have increased in the Delta over the past few decades (Brown and Michniuk 2007, p. 196). Largemouth bass, however, occur in shallow freshwater habitats, closer to shore than the pelagic longfin smelt, and do not typically co-occur with longfin smelt. Baxter *et al.* (2010, p. 40) reported that no longfin smelt have been found in largemouth bass stomachs sampled in a recent study of largemouth bass diet. Moyle (2002, p. 238) believed that inland silverside (*Menidia beryllina*), another nonnative predatory fish, may be an important predator on longfin smelt eggs, larvae, juveniles, and adults. Rosenfield (2010, p. 18) acknowledged that they are likely major predators of longfin smelt eggs and larvae but thought it unlikely that they were an important predator on juveniles and subadults because inland silversides prefer shallow water habitats whereas juvenile and subadult longfin smelt do not.

In the Bay-Delta, predation of longfin smelt may be high in the Clifton Court Forebay, where the SWP water export pumping plant is located (Moyle 2002, p. 238; Baxter *et al.* 2010, p. 42). However, once they are entrained in the Clifton Court Forebay, longfin smelt mortality would be high anyway due to high water temperatures in the forebay (CDFG 2009b, p. 4) and entrainment into the SWP water export pumping plant. In addition to elevated predation levels in the Clifton Court Forebay, predation also is concentrated at sites where fish salvaged from the SWP and CVP export facilities are released (Moyle 2002, p. 238). However, few longfin smelt survive the salvage and transport process (see Factor E: Entrainment Losses, below) and therefore predation is not expected to be an important factor at drop-off sites. Reduced freshwater flows may result in lower turbidity and increased water clarity (see Factor A, above), which may contribute to increased risk of predation (Baxter *et al.* 2010, p. 64).

In Lake Washington, longfin are preyed upon by prickly sculpin (*Cottus asper*) (Tabor *et al.* 2007, p. 1085) and cutthroat trout (*Oncorhynchus clarki*) (Norwak *et al.* 2004, p. 632; Beauchamp *et al.* 1992, p. 156). Cutthroat trout have displaced the northern pikeminnow as the most important predator in Lake Washington and may be having an effect on other components of the ecosystem, including longfin smelt populations (Norwak *et al.* 2004, pp. 633–634).

Summary of Factor C

Similar to other threats, very little information is available about disease or predation threats to longfin smelt populations outside of the Bay-Delta. We found no information that disease is a threat to the longfin smelt throughout its range. Longfin smelt is a small fish that is preyed upon by a wide variety of fish, birds, and mammals, but we found no information documenting predation as a threat to the species rangewide. Predation, along with mortality from entrainment (see Factor E: Entrainment Losses, below), has been identified as a top-down effect that may be contributing to recent declines of longfin smelt and other pelagic fish species in the Bay-Delta estuary (Pelagic Organism Decline) (Sommer *et al.* 2007, p. 275). However, factors contributing to the Pelagic Organism Decline are numerous and complex, and the combination of underlying causal mechanisms remains uncertain (Baxter *et al.* 2010, pp. 61–69). Therefore, based on our review of the best available scientific and commercial information, we conclude that disease or predation are not significant current or future threats to the longfin smelt throughout its range.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Federal Laws

A number of federal environmental laws and regulations exist that may provide some protection for longfin smelt: the National Environmental Policy Act, the Central Valley Project Improvement Act, and the Clean Water Act.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires all Federal agencies to formally document, consider, and publicly disclose the environmental impacts of major Federal actions and management decisions significantly affecting the human environment. NEPA documentation is provided in an environmental impact statement, an environmental assessment, or a categorical exclusion, and may be subject to administrative or judicial appeal. However, the Federal agency is not required to select an alternative having the least significant environmental impacts, and may select an action that will adversely affect sensitive species provided that these effects are known and identified in a NEPA document. Therefore, we do not consider the NEPA process in itself is to be a regulatory mechanism that is certain to provide significant protection for the longfin smelt.

Central Valley Project Improvement Act

The Central Valley Project Improvement Act (Pub. L. 102–575) (CVPIA) amends the previous Central Valley Project authorizations to include fish and wildlife protection, restoration, and mitigation as project purposes having equal priority with irrigation and domestic uses, and fish and wildlife enhancement as having an equal priority with power generation (Pub. L. 102–575, October 30, 1992; Bureau of Reclamation 2009). Included in CVPIA section 3406 (b)(2) was a provision to dedicate 800,000 acre-feet of Central Valley Project yield annually (referred to as ''(b)(2) water'') for fish, wildlife, and habitat restoration. Since 1993, (b)(2) water has been used and supplemented with acquired environmental water (Environmental Water Account and CVPIA section 3406 (b)(3) water) to increase stream flows and reduce Central Valley Project export pumping in the Delta. These management actions were taken to contribute to the CVPIA salmonid population doubling goals and to protect Delta smelt and their habitat (Guinee 2011, pers. comm.). As discussed above, (see Biology and Factor A discussions), increased freshwater flows have been shown to be positively correlated with longfin smelt abundance; therefore, these management actions, although targeted towards other species, should also benefit longfin smelt.

Clean Water Act

Established in 1977, the Clean Water Act (33 U.S.C. 1251 *et seq.*) is the primary Federal law in the United States regulating water pollution. It employs a variety of regulatory and non-regulatory means to reduce direct water quality impacts and manage polluted runoff. The Clean Water Act provides the basis for the National Pollutant Discharge Elimination System (NPDES) and gives the Environmental Protection Agency (EPA) the authority to set effluent limits and require any entity discharging pollutants to obtain a NPDES permit. The EPA is authorized through the Clean Water Act to delegate the authority to issue NPDES permits to State governments and has done so in California. In States that have been authorized to implement Clean Water Act programs, EPA retains oversight responsibilities. Water bodies that do not meet applicable water quality

standards are placed on the section 303(d) list of impaired water bodies, and the State is required to develop appropriate total maximum daily loads (TMDL) for the water body. A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards. At present, TMDLs are not in place in all impaired watersheds in which longfin smelt are known to occur. The Clean Water Act has not effectively limited ammonia input into the system, and ammonia has been shown to negatively affect the longfin smelt's food supply.

State Laws

The State of California has a number of environmental laws and regulations which may provide some protection for longfin smelt: California Endangered Species Act, California Environmental Quality Act, California Marine Invasive Species Act, Porter-Cologne Water Quality Control Act, and regulatory prohibitions on streambed alterations.

California Endangered Species Act

Longfin smelt was listed as threatened under the California Endangered Species Act (CESA) (California Fish and Game Code 2050 *et seq.*) in 2009. The CESA prohibits unpermitted possession, purchase, sale, or take of listed species. However, the CESA definition of take does not include harm, which under the Act's implementing regulations includes significant modification or degradation of habitat that actually kills or injures wildlife by significantly impairing essential behavioral patterns (50 CFR 17.3). CESA allows take of species for otherwise lawful projects through use of an incidental take permit. An incidental take permit requires that impacts be minimized and fully mitigated (CESA sections 2081 (b) and (c)). Furthermore, CESA requires that the issuance of the permit will not jeopardize the continued existence of a State-listed species. The CESA does require consultation between CDFG and other State agencies to ensure that activities of State agencies will not jeopardize the continued existence of State-listed species (CERES 2009, p. 1). Longfin Smelt Incidental Take Permit No. 2081–2009–001–03 specifies that the Smelt Working Group, which was created under the Service's 2008 delta smelt biological opinion (Service 2008, p. 30), provide recommendations for export pumping reduction to CDFG if any of several criteria is reached. One of the criteria is that total salvage of adult longfin smelt (fish greater than or equal to 80 mm in length) at the State Water Project and Central Valley Project export pumps between December and February may not exceed five times the Fall Midwater Trawl longfin smelt annual abundance index. Also, if longfin abundance is low and surveys indicate that adults are distributed close to the export pumps, the Smelt Working Group may consider making recommendations for Old and Middle River Flows that would reduce pumping (CDFG 2009c, pp. 1–34; Smelt Working Group 2011, p. 4).

California Environmental Quality Act

The California Environmental Quality Act ((CEQA) (Public Resources Code section 21000 *et seq.*)) requires review of any project that is undertaken, funded, or permitted by the State of California or a local government agency. If significant effects are identified, the lead agency has the option of requiring mitigation through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA sec. 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed endangered species or their habitat. Protection of listed species through CEQA is, therefore, dependent on the discretion of the lead agency. The CEQA review process ensures that a full environmental review is undertaken prior to the permitting of any project within longfin smelt habitat.

California Marine Invasive Species Act

The California Marine Invasive Species Act (AB 433) was passed in 2003. This 2003 act requires ballast water management for all vessels that intend to discharge ballast water in California waters. All qualifying vessels coming from ports within the Pacific Coast region must conduct an exchange in waters at least 50 nautical mi offshore and 200 m (656 ft) deep or retain all ballast water and associated sediments. To determine the effectiveness of the management provisions of this 2003 act, the legislation also requires State agencies to conduct a series of biological surveys to monitor new introductions to coastal and estuarine waters. These measures should further minimize the introduction of new invasive species into California's coastal waters that could be a threat to the longfin smelt. The Coastal Ecosystems Protection Act of 2006 deleted a sunset provision of the Marine Invasive Species Act, making the program permanent.

Porter-Cologne Water Quality Control Act

The Porter-Cologne Water Quality Control Act (California Water Code 13000 *et seq.*) is a California State law that establishes the State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards that are responsible for the regulation of activities and factors that could degrade California water quality and for the allocation of surface water rights (California Water Code Division 7). In 1995, the SWRCB developed the Bay-Delta Water Quality Control Plan that established water quality objectives for the Delta. This plan is currently implemented by Water Rights Decision 1641, which imposes flow and water quality standards on State and Federal water export facilities to assure protection of beneficial uses in the Delta (USFWS 2008, pp. 21–27). The various flow objectives and export restraints were designed, in part, to protect fisheries. These objectives include specific freshwater flow requirements throughout the year, specific water export restraints in the spring, and water export limits based on a percentage of estuary inflow throughout the year. The water quality objectives were designed to protect agricultural, municipal, industrial, and fishery uses; they vary throughout the year and by the wetness of the year.

In December 2010, the California Central Valley Regional Water Quality Control Board (Regional Board) adopted a new National Pollutant Discharge and Elimination System (NPDES) permit for the Sacramento Regional Wastewater Treatment Plant to address ammonia loading to the Sacramento River and the Delta. In January 2011, the Sacramento Regional County Sanitation District petitioned the Regional Board for a review of the permit, which may require a year or more. There is currently no TMDL in place for ammonia discharge into the Sacramento watershed. The EPA is currently updating freshwater ammonia criteria that will include new discharge limits on ammonia (EPA 2009, pp. 1–46). Ammonia has been shown to have negative effects on prey items that longfin smelt rely upon (see Factor E: Contaminants, below). This regulation does not adequately mitigate potential negative effects to longfin smelt from ammonia in the Bay-Delta.

Streambed Alteration

In California, section 1600 *et seq.* of the California Fish and Game Code authorizes CDFG to regulate streambed alteration. The CDFG must be notified of and approve any work that substantially diverts, alters, or obstructs the natural flow or that substantially changes the bed, channel, or banks of any river, stream, or lake. If an existing fish or wildlife resource, including longfin smelt, may be substantially adversely

affected by a project, the project proponent must submit proposals to protect the species to the CDFG at least 90 days before the start of the project. However, these proposals are subject to agreement by the project proponent. If CDFG deems proposed measures to be inadequate, a third party arbitration may be initiated. However, projects that cause significant environmental damage such as destruction of species and their habitat including longfin smelt may be approved because the CDFG has no authority to deny requests for streambed alteration.

Oregon Environmental Regulations

Oregon classifies longfin smelt as a native migratory fish under Oregon Administrative Rule (Division 412, 635–412–0005). Operators of artificial obstructions located in waters in which any native migratory fish are currently or were historically present must provide for fish passage requirements during installation, replacement, or abandonment of artificial obstructions (ODFW 2011, p. 1). This State law helps ensure passage of migratory longfin smelt between rearing and spawning habitat.

Washington Environmental Regulations

Washington's State Environmental Policy Act (RCW 43.21C) provides a process similar to CEQA and is applicable to every State and local agency in Washington State. This law requires State and local governments to consider impacts to the environment and include public participation in project planning and decision making (Washington Division of Wildlife 2011, p. 1). Project proponents must submit a proposal for their project to the appropriate city, county, or State lead agency where the project is taking place. The lead agency then makes a determination of whether or not the project will have significantly adverse environmental impacts. The lead agency then may require the applicant to change the proposal to minimize environmental impacts or in rare cases may deny the application (Washington State Department of Ecology (WSDE) 2002, pp. 1–2).

Alaska Environmental Regulations

The Anadromous Fish Act (AS 16.05.871–.901) requires that anyone desiring to alter a streambed or waterbody first obtain a permit from the Alaska Department of Fish and Game (ADFG). Regulated activities include construction, road crossings, gravel mining, water withdrawal, stream realignment, and bank stabilization. Although there are no minimization or mitigation components to this law, the ADFG commissioner has the ability to deny a permit if he or she finds the plans and specifications are insufficient for the proper protection of anadromous fish. The Fishway or Fish Passage Act (AS 15.05.841) requires that activities within or crossing a stream obtain permission from ADFG if they will impede the passage of resident or anadromous fish. This provides some degree of protection for longfin smelt, which is categorized as an anadromous fish in the State of Alaska.

Canadian Environmental Regulations

The Canadian Environmental Assessment Act (S.C. 1992, c. 37) was passed by the Canadian Parliament in 1992. The Act requires Federal departments to conduct environmental assessments for proposals where the government is the proposer or the project involves Federal funding or permitting. The Canadian Environmental Protection Act of 1999 is intended to prevent pollution, protect the environment and human health, and contribute to promoting sustainable development. Canada has the Canadian Environmental Protection Act (CEPA), which is equivalent to the United States' NEPA. It was enacted to protect Canada's natural resources through pollution prevention and sustainable development. This provides some level of protection for longfin smelt from pollution and habitat degradation. The longfin smelt is not currently a protected species under the Species at Risk Act (SARA) of 2002 (S.C. 2002 c. 29; SARA). SARA is similar to the United States' Endangered Species Act. If the longfin smelt were determined by the Canadian government to need protection in the future, it could be listed under SARA.

Summary of Factor D

We evaluate existing regulatory mechanisms that have an effect on threats that we have identified elsewhere in the threats analysis. We do not evaluate the lack of a regulatory mechanism that may address a particular threat if that regulatory mechanism does not exist. We find that the threats to the longfin smelt and its habitat on Federal, State, and private lands on a range-wide basis are minimal (Factors A, B, C and E). Existing federal regulatory mechanisms provide a degree of protection for longfin smelt from these threats. Therefore, we find that regulatory mechanisms provide adequate protections to longfin smelt and its habitat throughout its range.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Other natural or manmade factors potentially affecting the continued existence of longfin smelt include entrainment losses from water diversions, introduced species, and contaminants.

Entrainment Losses

The only information we found on entrainment losses of longfin smelt comes from the Bay-Delta population. Entrainment occurs when fish are drawn toward water diversions, where they are typically trapped or killed. In the Bay-Delta, water is diverted and fish potentially entrained at four major water export facilities within the Delta, two power plants, and numerous small water diversions throughout the Delta for agriculture and in Suisun Marsh for waterfowl habitat. In their 2009 status review of longfin smelt, CDFG (2009, pp. 19–26) summarized entrainment losses at these water diversions.

Water Export Facilities

The four State and Federal water export facilities (pumping stations) in the Delta are the State Water Project (SWP) facility in the south Delta, the Central Valley Project (CVP) in the south Delta, the Contra Costa facility in the south Delta, and the North Bay Aqueduct facility in the north Delta. The SWP and CVP facilities pump the majority of the water exported from the Delta. Average annual volumes of water exported from these facilities between 1995 and 2005 were 3.60 km^3 at the SWP facility, 3.10 km^3 at the CVP facility, 0.15 km^3 at the Contra Costa facility, and 0.05 km^3 at the North Bay Aqueduct facility (Sommer *et al.* 2007, p. 272). Depending on upstream flow through the Delta, operation of the SWP and CVP facilities often causes reverse flows in the river channels leading to them; longfin smelt that occupy these channels during certain times of the year may be entrained by these reverse flows. The SWP and CVP water export facilities are equipped with their own fish collection facilities that divert entrained fish into holding pens using louver-bypass systems to protect them from being killed in the pumps. The fish collected at the facilities are referred to as ''salvaged,'' and are loaded onto tanker trucks and returned to the western Delta downstream (Aasen 2009, p. 36). The movement of fish can result in mortality due to overcrowding in the tanks, stress, moving procedures, or predation at locations where the fish are released. Salvage is an *index* of

entrainment, not an estimate, and is much smaller than total entrainment (Castillo *et al.* in review). Of spawning age fish (age-1 and age-2), which contribute most to longfin smelt population dynamics in the Bay-Delta, the total number of longfin smelt salvaged at both pumps between 1993 and 2007 was 1,133 (CDFG 2009, Attachment 3, p. 2).

Fish entering the intake channel of the CVP or the radial gates of the 31,000-acre Clifton Court Forebay reservoir (SWP) are considered entrained (Fujimura 2009, p. 5; CDFG 2009b, p. 2). Most longfin smelt that become entrained in Clifton Court Forebay are unable to escape (CDFG 2009b, p. 4). The number of fish entrained at the SWP and CVP facilities has never been determined directly, but entrainment losses have been estimated indirectly using data from research and monitoring efforts. The magnitude of entrainment of larval longfin smelt is unknown because only fish greater than 20 mm in length are salvaged at the two facilities (Baxter *et al.* 2008, p. 21). In years with low freshwater flows, approximately half of the longfin smelt larvae and early juveniles may remain for weeks within the Sacramento-San Joaquin Delta (Dege and Brown 2004), where model simulations indicate they are vulnerable to entrainment into State Water Project, Central Valley Project, and other diversions (Kimmerer and Nobriga 2008, CDFG 2009a, p. 8).

Entrainment is no longer considered a major threat to longfin smelt in the Bay-Delta because of current regulations. Efforts to reduce delta smelt entrainment loss through the implementation of the 2008 delta smelt biological opinion and the listing of longfin smelt under the CESA have likely reduced longfin smelt entrainment losses. The high rate of entrainment that occurred in 2002 that threatened the Bay Delta longfin smelt population is unlikely to recur, and would no longer be allowed under today's regulations because limits on longfin smelt take due to CESA regulations (see Factor D discussion, below) would trigger reductions in the magnitude of reverse flows.

Power Plants

Two power plants located near the confluence of the Sacramento and San Joaquin Rivers, the Contra Costa Generating Station and the Pittsburg Generating Station, pose an entrainment risk to longfin smelt. Past entrainment losses of delta smelt at these two facilities were significant and considered a threat to delta smelt (75 FR 17671; April 7, 2010). Power plant operations have been substantially reduced since the late 1970s, when high entrainment and impingement were documented (CDFG 2009, p. 24); the power plants are now either kept offline or operating at very low levels, except as necessary to meet peak power needs. From 2007–2010, capacity utilization of these units averaged only 2.3 percent of maximum capacity. No longfin smelt were detected during impingement sampling conducted between May of 2010 and April of 2011 to monitor entrainment losses at the two power plants (Tenera Environmental 2011, entire). The company that owns the two power plants has committed to retiring one of the two power stations in 2013 (Contra Costa Generating Station) and has made this commitment enforceable through amendments to its Clean Air Act Title V permit (Raifsnider 2011, pers. comm.).

Agricultural Diversions

Water is diverted at numerous sites throughout the Bay-Delta for agricultural irrigation. Herren and Kawasaki (2001) reported over 2,200 such water diversions within the Delta, but CDFG (2009, p. 25) notes that number may be high because Herren and Kawasaki (2001) did not accurately distinguish intake siphons and pumps from discharge pipes. CALFED's Ecosystem Restoration Program (ERP) includes a program to screen remaining unscreened small agricultural diversions in the Delta and the Sacramento and San Joaquin Rivers. The purpose of screening fish diversions is to prevent entrainment losses; however, very little information is available on the efficacy of screening these diversions (Moyle and Israel 2005, p. 20). Agricultural operations begin to divert water in March and April, and many longfin smelt have begun leaving the Delta by this time. Water diversions are primarily located on the edge of channels and along river banks. Longfin smelt are a pelagic fish species and tend to occupy the middle of the channel and the middle of the water column, where they are unlikely to be vulnerable to entrainment into these diversions.

Suisun Marsh Diversions

There are 366 diversions in Suisun Marsh used to enhance waterfowl habitat (USFWS 2008, p. 172). Water is pumped at these diversions between October and May. Longfin larvae are abundant in the Marsh from February through April, while adults are abundant from October to February (Meng and Mattern 2001, p. 756; Rosenfield and Baxter 2007, p. 1588). During a 2-year study sampling 2.3 million m^3 (81.2 million ft^3) of water entering intakes, entrainment was found to be low, capturing only 124 adult longfin and 160 larvae (Enos *et al.* 2007, p. 16). Restrictions on pumping have been put in place to protect delta smelt and salmon. These restrictions likely also benefit longfin smelt.

Introduced Species

Nonnative introduced species (both plants and animals) are common in many of the estuaries within the range of the longfin smelt. Introduced species can significantly alter food webs in aquatic ecosystems. Introduced animal species can adversely affect longfin smelt through predation (see Factor C discussion, above) or competition. Although introduced species are common within many of the estuaries occupied by longfin smelt, most of the information we found on effects of introduced species on longfin smelt was for the Bay-Delta population.

Bay-Delta Population

The Bay-Delta is considered one of the most highly invaded estuaries in the world (Sommer *et al.* 2007, p. 272). Longfin smelt abundance in the Bay-Delta has remained low since the mid-1980s (see Abundance section, above). This long-term decline has been at least partially attributed to effects of the introduced overbite clam (Kimmerer 2002a, p. 47; Sommer *et al.* 2007, p. 274; Rosenfield and Baxter 2007, p. 1589; Baxter *et al.* 2010, pp. 61–62). The overbite clam has impacted zooplankton abundance and species composition by grazing on the phytoplankton that comprise part of the zooplankton's food base (Orsi and Mecum 1996, pp. 384–386) and by grazing on larval stages of certain zooplankton like *Eurytemora affinis* (no common name) (Kimmerer 2002, p. 51; Sommer *et al.* 2007, pp. 274–276). Longfin smelt recruitment (replacement of individuals by the next generation) has steadily declined since 1987, even after adjusting for Delta freshwater flows (Nobriga 2010, slide 5). These data suggest that changes in the estuary's food web following introduction of the overbite clam may have had substantial and long-term impacts on longfin smelt population dynamics in the Bay-Delta.

Numerous other invasive plant and animal species have been introduced into the Bay-Delta, and ecosystem disruptions will undoubtedly continue as new species are introduced. Sommer *et al.* (2007, p. 272) note that the quagga mussel (*Dreissna bugensis*) was discovered in southern California in late 2006, and that it could become

established in the Bay-Delta and cause substantial ecosystem disruption.

Other Populations

The Eel River is undergoing a shift from native anadromous to resident introduced fish species. Of particular importance are the California roach (*Hesperoleucus symmetricus)* and the Sacramento pikeminnow (*Ptychocheilus grandis*) (Brown and Moyle 1997, p. 274). The Sacramento pikeminnow is known to cause shifts in spatial distribution of native species (Brown & Moyle 1991, p. 856). The Sacramento pikeminnow preys on native fishes, particularly emigrating juvenile salmonids (Moyle 2002, p. 156) and likely preys upon the longfin smelt when present.

In Humboldt Bay, one study recorded 73 nonnative species, with another 13 species of uncertain status (Boyd 2002, pp. 89–91). Many of the nonnative species, most of which are invertebrates, have been present in the Bay for over 100 years, although some introductions have also occurred more recently (Boyd 2002, pp. 89–91). It is possible that the presence of some of these introduced species have resulted in changes to the food web resulting in changes to longfin smelt food availability in Humboldt Bay, as has occurred in the Bay-Delta. However, there are no data with which to evaluate this hypothesis. Commercial oyster culturing in Humboldt Bay began in 1955 (Barrett 1963, p. 38). Oyster culture beds within the bay are located in areas that are favorable to eelgrass (*Zostera marina*), and the harvesting of oysters in these beds has resulted in a reduction of and damage to native eelgrass in Humboldt Bay (Trianni 1996, p. 4; Rummrill and Poulton 2004, p. 2). Longfin smelt are known to feed on fauna found on native eelgrass, and therefore loss of eelgrass communities could result in lower levels of longfin smelt prey, possibly resulting in decreased longfin smelt survival.

Over 100 species of nonnative, invasive aquatic plants and animals have been documented in the Yaquina Bay estuary in Oregon (Oregon State University 2011, p. 1). One of the plants that has become established is *Zostera japonica,* a seagrass that was introduced to Yaquina Bay as live packing material for Japanese oysters. It poses a competitive threat to the native eelgrass (Brown *et al.* 2007, p. 9), and longfin smelt are known to feed on fauna found on native eelgrass (Phillips 1984, pp. 1–85). Invasive fish species in Yaquina Bay include American shad (*Alosa sapidissima*), common carp (*Cyprinus carpio*), bass (*Micropterus spp.*), and walleye (*Sander vitreum*).

Numerous nonnative, invasive plant and animal species have established populations within the Columbia River estuary. Nonnative, invasive plants and fish are the largest taxa to inhabit the estuary, followed by mollusks and crustaceans (Sanderson *et al.* 2009, pp. 245–256). American shad was introduced in the Columbia River soon after 1871 (Petersen *et al.* 2011, pp. 1–42). The spawning adult shad population in the Columbia River is more than 5,000,000 individuals, the largest anywhere (Petersen *et al.* 2011, pp. 1–42). Shad may have large, negative effects on Columbia River ecosystems, as adult and juvenile shad prey on zooplankton, thereby reducing the availability of prey for other fish species (Sanderson *et al.* 2009, pp. 245–256). Also present in the lower Columbia River are channel catfish (*Ictalurus punctatus*), striped bass, smallmouth bass (*Microperterus dolomieui*), largemouth bass (*Micropterus salmoides*), and walleye (*Sander vitreus*). These nonnative fishes are aggressive predators and have likely substantially altered food webs in the Columbia River estuary (Sanderson *et al.* 2009, pp. 245–256). The Eurasian water milfoil (*Myriophyllum spicatum*) may have been introduced into the lower Columbia River by ballast water from European ships in the 1800s (Aiken *et al.* 1979, pp. 201–215). It forms dense mats of vegetation and results in reduced dissolved oxygen concentrations as the plants decompose, altering aquatic ecosystem chemistry and function (Cronin *et al.* 2006, pp. 37–43; Unmuth *et al.* 2000, pp. 497–503), which could potentially restrict longfin smelt distribution in the region.

Hundreds of invasive plants and animals have found their way into Puget Sound through importation of soils, plants, fruits, and seeds; through boat hulls and ship ballast water discharge; and through intentional human releases. Invasive tunicate species that reproduce quickly and cover docks and boat hulls are also present in the sound (Puget Sound Partnership 2008b, p. 26).

Contaminants

Bay-Delta

Similar to other potential threats to longfin smelt, most of the information available is for the Bay-Delta. In 2009, over 15 million pounds of pesticides were applied within the five-county Bay-Delta area (California Department of Pesticide Regulation 2011, p. 1). Toxicity to invertebrates has been noted in water and sediments from the Delta and associated watersheds (*e.g.,* Werner *et al.* 2000, pp. 218, 223). Fish exposed to agricultural drainage water from the San Joaquin River watershed can exhibit body burdens of selenium exceeding the level at which reproductive failure and increased juvenile mortality occur (Saiki *et al.* 2001, p. 629). Toxicity studies specific to longfin smelt are not available, but data do exist for other fish species such as the delta smelt, a related species. Longfin smelt could be similarly affected by contaminants as some life stages utilize similar habitat and prey resources, and longfin smelt have a physiology similar to delta smelt. Kuivila and Moon (2004, p. 239) found that peak densities of larval and juvenile delta smelt sometimes coincided in time and space with elevated concentrations of dissolved pesticides in the spring. These periods of co-occurrence lasted for up to 2 to 3 weeks. Concentrations of individual pesticides were low and much less than would be expected to cause acute mortality; however, the effects of exposure to the complex mixtures of pesticides are unknown.

Bay-Delta waters are listed as impaired for several legacy and currently used pesticides under the Clean Water Act section 303(d) (California Department of Pesticide Regulation 2011, p. 1). Concentrations of dissolved pesticides vary in the Delta both temporally and spatially (Kuivila 2000, p. 1). Several areas of the Delta, particularly the San Joaquin River and its tributaries, are impaired due to elevated levels of diazinon and chlorpyrifos, which are toxic at low concentrations to some aquatic organisms (MacCoy *et al.* 1995, pp. 21–30). Several studies have demonstrated the acute and chronic toxicity of two common dormant-spray insecticides, diazinon and esfenvalerate, in fish species (Barry *et al.* 1995, p. 273; Goodman *et al.* 1979, p. 479; Holdway *et al.;* 1994, p. 169; Scholz *et al.* 2000, p. 1911; Tanner and Knuth 1996, p. 244).

Pyrethroid pesticides are of particular concern because of their widespread use, and their tendency to be genotoxic (DNA damaging) to fishes at low doses (in the range of micrograms per liter) (Campana *et al.* 1999, p. 159). The pyrethroid esfenvalerate is associated with delayed spawning and reduced larval survival of bluegill sunfish (*Lepomis macrochirus*) (Tanner and Knuth 1996, pp. 246–250) and increased susceptibility of juvenile Chinook salmon (*Oncorhynchus tshawytscha*) to disease (Clifford *et al.* 2005, pp. 1770–1771). In addition, synthetic pyrethroids may interfere with nerve cell function, which could eventually result in paralysis (Bradbury and Coats 1989, pp.

377–378; Shafer and Meyer 2004, pp. 304–305).

Weston and Lydy (2010, p. 1835) found the largest source of pyrethroids flowing into the Delta to be coming from the Sacramento Regional Water Treatment Plant (SRWTP), where only secondary treatment occurs. Their data not only indicate the presence of these contaminants, but the concentrations found exceeded acute toxicity thresholds for the amphipod *Hyalella azteca.* This is of substantial concern because the use of insecticides in the urban environment had not before been considered the primary source of insecticides flowing into the Delta. Furthermore, this was not the case for the Stockton Waste Water Treatment facility, where tertiary treatment occurs, suggesting that the tertiary treatment that occurs at the Stockton facility could minimize or eliminate toxic effluent being dispersed from wastewater facilities (Baxter *et.al.* 2010, p. 33).

Several studies were initiated in 2005 to address the possible role of contaminants and disease in the declines of Bay-Delta fish and other aquatic species. The primary study consists of twice-monthly monitoring of ambient water toxicity at 15 sites in the Bay-Delta and Suisun Bay (Baxter *et al.* 2010, pp. 16, 17, 30). Significant mortality of amphipods was observed in 5.6 percent of samples collected in 2006–2007 and 0.5 percent of samples collected in 2008–2009. Werner *et al.* (2010b, p. 3) found that larval delta smelt were between 1.8 and 11 times more sensitive than fathead minnows (*Pimephales promelas*) to copper, ammonia, and all insecticides except permethrin. Aquatic insects in which the longfin smelt relies upon for food have been shown to be sensitive to ammonia. *H. azteca* was the most sensitive to all pyrethroids tested, while *E. affinis* and *C. Dubia* were the most sensitive to ammonia (Werner *et al.* 2010b, pp. 18, 23). Pyrethroids are of particular interest because use of these insecticides has increased within the Bay-Delta watershed as use of organophosphate insecticides has declined. Longfin smelt are probably most vulnerable to the effects of toxic substances during the winter and spring, when their early life stages occur in the Delta and Suisun and San Pablo Bays, where they are closer to point and non-point inputs of contaminants from runoff.

The largest source of ammonia entering the Delta ecosystem is the Sacramento Regional Wastewater Treatment Plant (SRWTP), which accounts for 90 percent of the total ammonia load released into the Delta. Ammonia is un-ionized and has the chemical formula NH_3. Ammonium is ionized and has the formula NH_4^+. The major factors determining the proportion of ammonia or ammonium in water are water pH and temperature. This is important, as NH_3 ammonia is the form that can be directly toxic to aquatic organisms, and NH_4^+ ammonium is the form documented to interfere with uptake of nitrates by phytoplankton (Dugdale *et al.* 2007, p. 17; Jassby 2008, p. 3).

Effects of elevated ammonia levels on fish range from irritation of skin, gills, and eyes to reduced swimming ability and mortality (Wicks *et al.* 2002, p. 67). Delta smelt have been shown to be directly sensitive to ammonia at the larval and juvenile stages (Werner *et al.* 2008, pp. 85–88). Longfin smelt could similarly be affected by ammonia as they utilize similar habitat and prey resources and have a physiology similar to delta smelt. Ammonia also can be toxic to several species of copepods important to larval and juvenile fishes (Werner *et al.* 2010, pp. 78–79; Teh *et al.* 2011, pp. 25–27).

In addition to direct effects on fish, ammonia in the form of ammonium has been shown to alter the food web by adversely impacting phytoplankton and zooplankton dynamics in the estuary ecosystem. Historical data show that decreases in Suisun Bay phytoplankton biomass coincide with increased ammonia discharge by the SRWTP (Parker *et al.* 2004, p. 7; Dugdale *et al.* 2011, p. 1). Phytoplankton preferentially take up ammonium over nitrate when it is present in the water. Ammonium is insufficient to provide for growth in phytoplankton, and uptake of ammonium to the exclusion of nitrate results in decreases in phytoplankton biomass (Dugdale *et al.* 2007, p. 23). Therefore, ammonium impairs primary productivity by reducing nitrate uptake in phytoplankton. Ammonium's negative effect on the food web has been documented in the longfin smelt rearing areas of San Francisco Bay and Suisun Bay (Dugdale *et al.* 2007, pp. 26–28). Decreased primary productivity results in less food available to longfin smelt and other fish in these bays.

Several streams that flow into the Bay-Delta are listed as impaired because of high concentrations of metals such as cadmium, copper, lead, and zinc. Metal concentrations have been found to be toxic to fish in the upper Sacramento River near and downstream from Redding (Alpers *et al.* 2000a, p. 4; 2000b, p. 5). Elevated levels of metals such as copper in streambed sediment continue to occur in the upper Sacramento River Basin downstream from Redding (MacCoy and Domagalski 1999, p. 35). Copper and other metals may affect aquatic organisms in upper portions of contributing watersheds of the Delta. Mercury and its bioavailable form (methylmercury) are distributed throughout the estuary, although unevenly. Mercury has been known to bioaccumulate and cause neurological effects in some fish species, but it has not been associated with the Pelagic Organism Decline (Baxter *et al.* 2010, p. 28). No specific information is available on the effects of mercury exposures to longfin smelt. Selenium, introduced into the estuary primarily from agricultural irrigation runoff via the San Joaquin River drainage and oil refineries, has been implicated in toxic and reproductive effects in fish and wildlife (Baxter 2010 *et al.,* p. 28; Linville *et al.* 2002, p. 52). Selenium exposure has been shown to have effects on some benthic foraging species; however there is no evidence that selenium exposure is contributing to the decline of longfin smelt or other pelagic species in the Bay-Delta (Baxter *et al.* 2010, p. 28).

Large blooms of toxic *Microcystis aeruginosa* (blue-green algae) were first documented in the Bay-Delta during the summer of 1999 (Lehman *et al.* 2005, p. 87). *M. aeruginosa* forms large colonies throughout most of the Delta and increasingly down into eastern Suisun Bay (Lehman *et al.* 2005, p. 92). Blooms typically occur when water temperatures are above 20 °C (68 °F) (Lehman *et al.* 2005, p. 87). Preliminary evidence indicates that the toxins produced by local blooms are not directly toxic to fishes at current concentrations (Baxter *et al.* 2010, p. 10). However, the copepods that the related delta smelt eat are particularly susceptible to those toxins (Ger 2008, pp. 12, 13). *Microcystis* blooms may also decrease dissolved oxygen to lethal levels for fish (Lehman *et al.* 2005, p. 97). Blooms typically occur between late spring and early fall when the majority of longfin smelt occur farther downstream, so effects are expected to be minimal.

Other Populations

As in the Bay-Delta, pesticide and metals contamination occurs in Yaquina Bay, the Columbia River, and the Fraser River (Johnson *et al.* 2007, p. 1; Lower Columbia River Estuary Partnership (LCREP) 2011, p. 1; Blomquist, 2005, p. 8). Ammonia contamination occurs in the Klamath River (Oregon Department of Environmental Quality (ODEQ) 2011, p. 1) and Cook Inlet (ADEC 2011a, p. 1), and toxic algal blooms occur in the Klamath River (California State Water

Resources Control Board (CSWRCB) 2010, p. 1) and Yaquina Bay (ODEQ Water Quality Assessment Online Database 2011).

Industrial contaminants such as dioxins, polychlorinated biphenyls (PCBs), and polyaromatic hydrocarbons (PAHs) occur in Humboldt Bay (NCRWQCB 2010 pp. 3–4), Yaquina Bay (Johnson *et al.* 2007, p. 1), the Columbia River (LCREP 2011, p. 1), Puget Sound (Puget Sound Partnership 2008b, p. 21), and the Fraser River (British Columbia Ministry of Environment 2001, pp. 5–6; Blomquist, 2005, p. 8). Suspended sediment is a contaminant in the Eel River (Downie 2010, p. 10), Humboldt Bay (NCRWQCB 2010 pp. 3–4), Yaquina Bay (ODEQ Water Quality Assessment Online Database 2011), and Puget Sound (WA Department Ecology 2008, p. 1). Nutrient enrichment and low levels of dissolved oxygen occur in the Klamath River (CSWRCB 2010, p.1), Yaquina Bay (Bricker *et al.* 1999, pp. 1–71), and Fraser River (British Columbia Ministry of Environment 2001, pp. 5–6). Fecal coliform and other forms of bacteria contaminate Yaquina Bay, Puget Sound, the Fraser River, and Cook Inlet (Brown *et al* 2007, pp. 16–17, WA Department Ecology 2008, p. 1, Blomquist, 2005, p. 8, ADEC 2011a, p. 1).

Oregon and Washington States have listed multiple reaches of the Lower Columbia River on their Federal Clean Water Act 303(d) lists, due to total dissolved gas levels exceeding State water quality standards. This occurs at several dams on these rivers where water flowing over the spillway of a dam creates air bubbles. When these are carried to depth in the dam's stilling basin, the higher hydrostatic pressure forces air from the bubbles into solution. The result is water supersaturated with dissolved nitrogen, oxygen, and the other constituents of air (ODEQ 2002, p. ix). High total dissolved gas levels can cause gas bubble trauma in fish, which can result in injury or mortality to fish species (ODEQ 2002, pp. 1–150).

Summary of Contaminants

Most fish including longfin smelt can be sensitive to adverse effects from contaminants in their larval or juvenile stages. Adverse effects to longfin smelt would be more likely to occur where sources of contaminants occur in close proximity to spawning and rearing habitats (brackish or fresh waters). Laboratory studies have shown certain contaminants to potentially have adverse effects on individual delta smelt, a related species. Field studies have shown that the contaminants of concern are elevated in some of the estuaries throughout the species' range, including the Bay-Delta.

Summary of Factor E

We evaluated whether entrainment losses, introduced species, and contaminants threaten the longfin smelt throughout its range. Longfin smelt is broadly distributed across a wide variety of estuaries from central California to Alaska, and there is no monitoring data documenting a population decline other than the population decline in the Bay-Delta.

Because the Bay-Delta system is one of the largest man made water systems in the world, it would be impractical to compare diversions and alterations in other estuaries to diversions and alterations in the Bay-Delta. The effects of entrainment in the Bay-Delta are unique to the estuary because of the large water diversions. Because diversions in other estuaries are much smaller, we expect that the effects from these diversions would be minimal in relation to the effects in the Bay-Delta. We have no information to show that entrainment is a threat to longfin smelt throughout its range.

Introduced species and contaminants are threats to the Bay-Delta long smelt population, but there is no information indicating that they are threats to the species in other parts of its range. Although invasive species are present in other estuaries, none have been documented to be having an effect on the longfin smelt food supply like the overbite clam has had. Similarly, although contaminants are present in other estuaries where the longfin smelt resides, none have been shown to have effects on the longfin smelt food supply like ammonia in the Bay-Delta has been shown to have.

Finding

As required by the Act, we considered the five factors in assessing whether the longfin smelt is endangered or threatened throughout all of its range. We have carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by the longfin smelt. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with recognized longfin experts and other Federal and State agencies.

Little information is available on longfin smelt populations other than the Bay-Delta and Lake Washington populations. Smelt caught along the Pacific Coast are rarely identified to species. Therefore, information on longfin smelt distribution and abundance outside the Bay-Delta is limited. Although monitoring data indicate a significant decline in the abundance of longfin smelt in the Bay-Delta, population monitoring for other populations is not available. Estuaries are complex ecosystems, and different estuaries within the longfin smelt's range vary greatly in their environmental characteristics and in how they are managed. For example, in no estuary within the range of the longfin smelt, other than the Bay-Delta, are large volumes (up to 35 percent of freshwater inflow between February and June, and up to 65 percent of inflow between July and January) of freshwater pumped directly out of the estuary.

Under Factor A, channel disturbances may have localized impacts to longfin smelt habitat suitability. However, we conclude that these activities are not significant threats to longfin smelt throughout its range. Climate change will likely affect longfin smelt in multiple ways, but longfin smelt are able to move between a wide range of aquatic environments that vary greatly in water temperature and salinity, and these behavioral and physiological characteristics of the species may help it adapt to the effects of climate change. We conclude that the best available information does not indicate that climate change threatens the continued existence of longfin smelt across its range. We conclude that reduced freshwater flows are a threat to the Bay-Delta longfin smelt population, but not to the species in the rest of its range. The Bay-Delta is unique among estuaries occupied by longfin smelt because large volumes of freshwater are exported away from the estuary on an annual basis. In addition, it is difficult to extrapolate from the Bay-Delta to other estuaries because the effects of water management in the Bay-Delta are likely unique to the physical, geologic, and hydrologic environment of that estuary. We conclude that the best scientific information available indicates that continued existence of the longfin smelt is not threatened in any part of its range outside of the Bay-Delta by the present or threatened destruction, modification, or curtailment of its habitat or range now or in the foreseeable future

Under Factor B, we evaluated potential threats from recreational and commercial fishing and from monitoring surveys on longfin smelt. Longfin smelt are protected from intentional take in California because the species is listed as threatened under CESA. Efforts have been made to reduce mortality of longfin smelt as bycatch in a bay shrimp trawl commercial fishery and in

monitoring surveys in the Bay-Delta. Longfin smelt is caught as part of recreational or commercial fisheries in Oregon, Washington, British Columbia, and Alaska, but numbers of fish caught are considered low, and we found no evidence that fisheries harvest was causing population declines of longfin smelt. We conclude that overutilization is not a significant current or future threat to longfin smelt across its range.

Under Factor C, we evaluated potential threats from disease and predation. We found no evidence of rangewide threats to the continued existence of the species due to disease or predation, now or in the foreseeable future.

Under Factor D, we conclude that several Federal and State laws and regulations provide varying levels of protection for the longfin smelt throughout its range. Several of these regulatory mechanisms promote protection of longfin smelt habitat and provide tools to implement these habitat protections. We conclude that longfin smelt is not threatened throughout its range by inadequate regulatory mechanisms, now or in the foreseeable future.

Under Factor E, we evaluated potential threats due to entrainment losses from water diversions, introduced species, and contaminants. Information indicates that introduced species are a threat to the Bay-Delta longfin smelt population and that ammonium may constitute a threat to the Bay-Delta longfin smelt population, but information does not indicate that entrainment losses, introduced species, or contaminants are threatening longfin smelt populations in other parts of its range, now or in the foreseeable future.

Based upon our review of the best available scientific and commercial information pertaining to the five factors, we find that the threats are not of sufficient imminence, intensity, or magnitude to indicate that the longfin smelt is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of its range. Therefore, we find that listing the longfin smelt as an endangered or threatened species throughout all of its range is not warranted at this time.

Distinct Vertebrate Population Segment

Having found that the best available information does not indicate that the longfin smelt warrants listing rangewide, we now assess whether any distinct population segments of longfin smelt meet the definition of endangered or are likely to become endangered in the foreseeable future (threatened). Under the Services' (joint policy of the Fish and Wildlife Service and National Marine Fisheries Service) DPS policy (61 FR 4722; February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to or removal from the Federal List of Endangered and Threatened Wildlife. These elements include: (1) The discreteness of a population in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (i.e., is the population segment endangered or threatened). We have identified one population that potentially meets all three elements of the 1996 DPS policy—the population that occurs in the Bay-Delta estuary. During the rangewide five-factor analysis, significant threats were identified only for the Bay-Delta population. Therefore, we determined that only the Bay-Delta population potentially meets the third element of the DPS.

Discreteness

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Marked Separation From Other Populations as a Consequence of Physical, Physiological, Ecological, or Behavioral Factors

The limited swimming capabilities of the longfin smelt, existing ocean current patterns, and the great distances between the Bay-Delta and other known breeding populations make it unlikely that regular interchange occurs between the Bay-Delta and other longfin smelt breeding populations. Longfin smelt is a relatively short-lived species that completes its 2- to 3-year life cycle moving between freshwater spawning habitat in the Delta and brackish water rearing habitat downstream (seaward) in the estuary within Suisun Bay, San Pablo Bay, and central San Francisco Bay. At least a portion of the population also migrates into the near-coastal waters of the Gulf of Farallones (Rosenfield and Baxter 2007, p. 1590). Although its swimming capabilities have not been studied, it is a small fish believed to have a limited swimming capacity (Moyle 2010, pp. 5–6). How longfin smelt return to the Bay-Delta from the Gulf of Farallones is not known (Rosenfield and Baxter 2007, p.1590).

The Bay-Delta population is the southernmost population of longfin smelt and is separated from other longfin smelt breeding populations by 56 km (35 mi). The nearest location to the Bay-Delta where longfin smelt have been caught is the Russian River, located north of the Bay-Delta; however, little information is available for this population (see Distribution section, above). Due to limited freshwater flow into the estuary and interannual variation in freshwater flow, it is unlikely that the estuary provides sufficient potential spawning and rearing habitat to support a regularly breeding longfin smelt population (Moyle 2010, p. 4).

The Eel River and Humboldt Bay are the next nearest locations where longfin smelt are known to occur, and they are located much farther to the north—Eel River is located 394 km (245 mi) north of the Bay-Delta, and Humboldt Bay is located 420 km (260 mi) north of the Bay-Delta. Moyle (2010, p. 4) considered Humboldt Bay to be the only other estuary in California potentially capable of supporting longfin smelt in most years.

In our April 9, 2009, longfin smelt 12-month finding (74 FR 16169), we concluded that the Bay-Delta population was not markedly separated from other populations and, therefore, did not meet the discreteness element of the 1996 DPS policy. This conclusion was based in part on the assumption that ocean currents likely facilitated dispersal of anadromous longfin smelt to and from the Bay-Delta to other estuaries in numbers that could readily sustain the Bay-Delta population group if it was to be extirpated. Since 2009, we have obtained information relevant to assumptions that we made in the 2009 12-month finding. Additional clarifying information comes in part from a declaration submitted to the U.S. District Court for the Northern District of California on June 29, 2010, by Dr. Peter Moyle, Professor of Fisheries Biology at the University of California at Davis (Moyle 2010, pp. 1–8). Moyle (2010, pp. 5–6) notes that he believes that we overestimated the swimming

capacity of longfin smelt in our 2009 12-month finding. Moyle (2010, p. 8) states that longfin smelt that migrate out of and back into the Bay-Delta estuary may primarily be feeding on the rich planktonic food supply in the Gulf of Farallones, and that this migration between the Bay-Delta and near coastal waters of the Gulf of Farallones does not indicate that longfin smelt are necessarily dispersing long distances to other estuaries to the north.

At the time of our last finding, we did not have information available assessing the ability of longfin smelt to disperse northward from the Bay-Delta or southward to the Bay-Delta using currents in the Pacific Ocean. Since the time of our previous finding (74 FR 16169; April 9, 2009), we have reviewed additional information on ocean currents in nearshore waters and over the continental shelf from approximately the Gulf of Farallones north to Coos Bay. We have evaluated the potential for longfin smelt to disperse northward from the Bay-Delta or southward to the Bay-Delta. On October 28, 2011, we convened a panel of experts to evaluate the potential of longfin smelt dispersal via ocean currents. Oceanographers on the panel were tasked with answering a series of questions on how ocean currents would affect longfin smelt potentially dispersing into or out of the Bay-Delta. Much of the following analysis was derived from that panel discussion. Our analysis relies upon ocean current information as it relates to what is known of longfin smelt biology and life history from the Bay-Delta population.

Table 2 overlays longfin smelt life history with general ocean current patterns in central and northern California. However, the California Current System exhibits a high degree of seasonality as well as weekly variability. Currents are highly variable in fall and winter but tend to be predominately northward. Surface currents are northward during the storm season from December to March and transition to southward in March or April. Offshore of central California the surface currents remain generally southward during summer. However, despite the predominant southward surface current, northward currents are common at depths around 60 to 200 m along the continental slope at all times of the year. This deeper current is known as the California Undercurrent (Paduan 2011, pers. comm.)

TABLE 2. Summary of longfin smelt life history within the Bay-Delta, and generalized coastal ocean circulation.

Month	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
First Year		Peak Hatching-freshwater, upstream Delta										
			Larval Rearing San Pablo and San Francisco Bays-salinities <8 psu									
	Juveniles Rearing				Juvenile Rearing – Primarily San Pablo, San Francisco Bays-							
Second Year			Juvenile Rearing									
					– Juvenile Rearing -Movement to the coastal ocean begins in the summer, mass movement to coastal ocean begins in July and August							
	Spawning Migration											Sp. Migr'n
	Peak Spawning-freshwater, Delta											
Coastal Current	Storm Season (Northward Flow)				Upwelling Season (Predominate Southward and Offshore Flow)				Relaxation Season (Weak Northward Flow)			

Eddies (clockwise water circulation areas) exist at various points between the Bay-Delta and Humboldt Bay at landmarks such as Point Arena and Cape Mendocino. These eddies vary in their distance from shore between 10 to 100 km (6 to 62 mi) (Padaun 2011, pers. comm.). During the summer upwelling season, northerly winds drive a southward offshore flow of near-surface waters (Dever *et al.* 2006, p. 2109) and also set up a strong current over the continental shelf that is deflected offshore at capes such as Cape Mendocino, Point Arena, and Point Reyes (Magnell *et al.* 1990, p. 7; Largier 2004, p. 107; Halle and Largier 2011, pp. 1–24). Several studies have used drifters (flotation devices tracked by satellites) and pseudo-drifters (computer-simulated satellite-tracked flotation devices) to evaluate currents in the California region of the Pacific Ocean. These studies indicate that the

circulation patterns located off Point Arena and Cape Mendocino limit dispersal (particularly southward) of flotation devices in the region (Sotka *et al.* 2004, p. 2150; Drake *et al.* 2011, pp. 1–51; Halle and Largier 2011, posters). This limitation is important because Cape Mendocino and Point Arena are between the Bay-Delta and the nearest likely self-sustaining population of longfin smelt in Humboldt Bay.

Longfin smelt are an euryhaline species, of which an unknown fraction of the population exhibits anadromy (Moyle 2002, p. 236; Rosenfield and Baxter 2007 p. 1578). Based on their small size and limited swimming ability, we expect that longfin smelt would be largely dependent on ocean currents to travel the large distance between the Bay-Delta and the Humboldt Bay. During wet years, newly spawned longfin smelt larvae may be flushed out to the ocean between December and March. It is unlikely that longfin smelt larvae can survive ocean transport because larvae are not known to tolerate salinities greater than 8 ppt (Baxter 2011b, pers. comm.), and surface salinities less than 8 ppt do not exist consistently in the ocean (Bograd and Paduan 2011, pers. comm.).

A portion of the longfin smelt that spawn in the Bay-Delta make their way to the ocean once they are able to tolerate full marine salinities, sometime during the late spring or summer of their first year of life (age-0) (City of San Francisco and CH2MHill 1984 and 1985, entire), and may remain there for 18 months or longer before returning to the Bay-Delta to spawn (Baxter 2011c, pers. comm.). A larger portion of longfin smelt enter the coastal ocean during their second year of life (age-1) (City of San Francisco and CH2MHill 1984 and 1985, entire) and remain there for 3 to 7 months until they re-enter the Bay-Delta to spawn in early winter (Rosenfield and Baxter 2007, p 1590; Baxter 2011c, pers. comm.). Most of these age-1 longfin smelt move to coastal waters in July and August, possibly to escape warm water temperatures or to obtain food (Moyle 2010, p. 8; Rosenfield and Baxter 2007, p. 1290). Some longfin smelt may live to 3 years of age and may remain in the coastal ocean until they are 3 years old. However, no 3-year old longfin smelt have been observed in the coastal ocean (Baxter 2011d, pers. comm.; Service 2011, unpublished data).

It is possible that some of these juvenile or adult longfin smelt could make their way into the Russian River, Eel River, or Humboldt Bay and supplement or sustain those populations by utilizing northward ocean currents (Padaun 2011, pers. comm.; Service 2011b, pp. 1–4), but there is no documentation of such long-distance coastal movements. The northward ocean currents are strongest and most reliable in winter, when satellite-tracked particles move between the Bay-Delta and Humboldt Bay in as little as 2 months (Service 2011, p. 3).

Opportunities for longfin smelt dispersal utilizing ocean currents from northern estuaries to the Bay-Delta are more limited. Studies have revealed that currents near Cape Mendocino and Point arena would carry small objects to the west away from the coast (Padaun 2011b, pers. comm.; Bograd 2011, pers. comm.). It is possible that longfin smelt in nearshore waters could travel south past these eddies if they stay close enough to shore. It is even possible that some longfin smelt may be moved closer to shore by the eddies (Bograd 2011, pers. comm.; Paduan 2011, pers. comm.). However, any longfin smelt that do travel south past the Cape Mendocino and Point Arena escarpments would be unlikely to re-enter the Bay-Delta. These offshore ocean currents could displace any longfin smelt potentially moving south more than 100 km (62 mi) offshore of the Bay-Delta (Paduan 2011a, pers. comm.). Pathways that transport objects close to shore would be expected to be rare, if they exist at all (Padaun 2011b, pers. comm.; Bograd 2011, pers. comm.). So while we considered whether ocean currents may transport or facilitate movement of longfin smelt from northern estuaries to the Bay-Delta estuary, there is no information showing that such dispersal movement occurs.

Using the best scientific data available, we compared longfin smelt biology and life history with the latest available ocean current data provided by oceanographers. We conclude that longfin smelt in the Bay-Delta population do not regularly breed or interact with longfin smelt in other breeding populations to the north and are therefore markedly separated from other longfin smelt populations.

Under the 1996 DPS policy, the discreteness standard does not require absolute separation of a DPS from other members of its species, nor does the standard require absolute reproductive isolation (61 FR 4722). Because of the great distances between the Bay-Delta and known breeding populations to the north, the small size of the longfin smelt, and the low likelihood that ocean currents could facilitate longfin smelt movements between widely separated populations, we conclude that the Bay-Delta population is markedly separated from other longfin smelt populations and therefore discreet.

Quantitative Measures of Genetic or Morphological Discontinuity

The 1996 DPS policy states that quantitative measures of genetic or morphological discontinuity may provide evidence of marked separation and discreteness. Stanley *et al.* (1995, p. 395) compared allozyme variation between longfin smelt from the Bay-Delta population and the Lake Washington population using electrophoresis. They found that individuals from the populations differed significantly in allele (portions of a chromosome that code for the same trait) frequencies at several loci (gene locations). However, the authors also stated that the overall genetic dissimilarity was within the range of other conspecific (of the same species) fish species, and concluded that longfin smelt from Lake Washington and the Bay-Delta are conspecific, despite the large geographic separation (Stanley *et al.* 1995, p. 395). This study provided evidence that the Bay-Delta population of longfin smelt differed in genetic characteristics from the Lake Washington population, but did not compare other populations rangewide to the Bay-Delta population. More recently, Israel *et al.* (2011, pp. 1–10) presented preliminary results from an ongoing study, but these results were inconclusive in providing evidence of whether the Bay-Delta population is markedly separated from other longfin smelt populations (Cope 2011, pers. comm.; Service 2011a, pp. 1–3).

We conclude that the limited quantitative genetic and morphological information available does not provide additional evidence of marked separation of the Bay-Delta longfin smelt population beyond the evidence presented above under Marked Separation from Other Populations as a Consequence of Physical, Physiological, Ecological, or Behavioral Factors.

Delimited by International Governmental Boundaries Within Which Differences in Control of Exploitation, Management of Habitat, Conservation Status, or Regulatory Mechanisms Exist That Are Significant in Light of Section 4(a)(1)(D) of the Act

The Bay-Delta population of longfin smelt is not delimited by an international boundary. Therefore, we conclude that it does not meet the international governmental boundaries criterion for discreteness.

Conclusion for Discreteness

Because of its limited swimming capabilities and because of the great distances between the Bay-Delta and known breeding populations to the north, we conclude that the Bay-Delta population is markedly separated from other longfin smelt populations, and thus meets the discreteness element of the 1996 DPS policy. The best available information indicates that longfin smelt from the Bay-Delta population complete their life cycle moving between freshwater, brackish water, and saltwater portions of the estuary and nearby coastal ocean waters in the Gulf of Farallones. The nearest known breeding population of longfin smelt is Humboldt Bay, 420 km (260 mi) north of the Bay-Delta. As a result, potential interchange between the Bay-Delta population and other longfin smelt breeding populations is limited. Although the best scientific information suggests that potential movement of longfin smelt northward from the Bay-Delta would be facilitated by ocean currents, potential movement from more northern estuaries south to the Bay-Delta would be more difficult and unlikely because of ocean currents. Based on our review of the best available scientific and commercial information available, we conclude that the Bay-Delta population of longfin smelt is markedly separated from other longfin smelt populations as a consequence of physical, physiological, ecological, or behavioral factors.

Significance

Since we have found that the Bay-Delta longfin smelt population meets the discreteness element of the 1996 DPS policy, we now consider its biological and ecological significance in light of Congressional guidance that the authority to list DPSes be used ''sparingly'' while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. As precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy, this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance.

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon.

The Bay-Delta population is the southernmost breeding population in the range of the species. Populations at the edge of a species' range may be important in species conservation because environmental conditions at the periphery of a species' range can be different from environmental conditions nearer the center of a species' range. Thus, populations at the edge of the taxon's range may experience different natural selection pressures that promote divergent evolutionary adaptations (Scudder 1989, entire; Fraser 2000, entire). Lomolino and Channell (1998, p. 482) hypothesized that because peripheral populations should be adapted to a greater variety of environmental conditions, they may be better suited to deal with anthropogenic (human-caused) disturbances than populations in the central part of a species' range; however, this hypothesis remains unproven. This could be especially important because of changing natural selection pressures associated with climate change.

For example, increasing ocean temperatures is an environmental change to which the Bay-Delta population of longfin smelt may be uniquely adapted. Because it is the southern-most estuary within the species' range, the Bay-Delta has warmer average water temperatures than estuaries in central and northern parts of the species' range. As a result, the Bay-Delta longfin smelt population may have behavioral or physiological adaptations for coping with higher water temperatures that may come as a result of climate change (see discussion under Factor A: Climate Change). Baxter *et al.* (2010, p. 68) conclude that high water temperatures in the Bay-Delta influence spatial distribution of longfin smelt in the estuary. Rosenfield and Baxter (2007, p. 1290) hypothesize that the partial anadromy exhibited by the population (part of the population is believed to migrate out into the cooler, nearby coastal ocean waters in the Gulf of Farallones) and concentrations of longfin smelt in deeper water habitat in summer months is at least partly a behavioral response to warm water temperatures found during summer and early fall in the shallows of south San Francisco Bay and San Pablo Bay (Rosenfield and Baxter 2007, p. 1590).

The Bay-Delta estuary, although greatly degraded, is the largest estuary on the Pacific Coast of the United States (Sommer *et al.* 2007, p. 271). Because of its large size and diverse habitat, it is capable of supporting a large longfin smelt population. Large populations are valuable in the conservation of species because of their lower extinction risks compared to small populations. Historically, longfin smelt is believed to have been one of the more abundant pelagic fishes in the Bay-Delta. The areal extent of tidal freshwater habitat in the Bay-Delta estuary exceeds that of other California estuaries by an order of magnitude (NOAA 2007, p. 1), providing not only more available spawning habitat but also important habitat diversity should conditions at any one location become unsuitable. The Bay-Delta contains significant amounts of tidal freshwater and mixing zone habitat (Monaco *et al.* 1992, p. 255), which is crucial for spawning and rearing of juvenile longfin smelt. Other Pacific Coast estuaries where longfin smelt occur are predominately river-dominated estuaries (*e.g.,* Russian River, Eel River, Klamath River, Columbia River), which have much smaller areas of low-salinity brackish water for longfin smelt rearing habitat.

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon.

Loss of the Bay-Delta population of longfin smelt would result in a significant gap in the range of the taxon because the nearest persistent longfin smelt breeding population to the Bay-Delta population is in Humboldt Bay, which is located approximately 420 km (260 mi) away. Loss of the Bay-Delta population would truncate the range of the species by hundreds of miles.

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as

an introduced population outside its historic range.

This factor does not apply to the Bay-Delta longfin smelt population because other naturally occurring populations are found within the species' range.

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

As discussed above under Quantitative Measures of Genetic or Morphological Discontinuity, two studies have evaluated genetic characteristics of the Bay-Delta longfin smelt population. One study concluded that genetic characteristics of the Bay-Delta population differed from the Lake Washington population but did not compare any other populations (Stanley *et al.* 1995, pp. 390–396). Israel *et al.* (2011, pp. 1–10) presented preliminary results from an ongoing study, but these results are inconclusive in determining whether the Bay-Delta population differs markedly from other longfin smelt populations in its genetic characteristics. Therefore, although information indicates that the genetic characteristics of the Bay-Delta population differs from at least one other longfin smelt population (Lake Washington), there is no other information currently available indicating that the genetic characteristics of the Bay-Delta population differ markedly from other longfin smelt populations.

Conclusion for Significance

We conclude that the Bay-Delta population is biologically significant to the longfin smelt species because the population occurs in an ecological setting unusual or unique for the species and its loss would result in a significant truncation of the range of the species. The Bay-Delta longfin smelt population occurs at the southern edge of the species' range and has likely experienced different natural selection pressures than those experienced by populations in middle portions of the species' range. The population may therefore possess unique evolutionary adaptations important to the conservation of the species. The Bay-Delta also is unique because it is the largest estuary on the Pacific Coast of the United States. Because of its large size and diverse aquatic habitats, the Bay-Delta has the potential to support a large longfin smelt population and is thus potentially important in the conservation of the species. The Bay-Delta population also is significant to the taxon because the nearest known breeding population of longfin smelt is hundreds of miles away, so loss of the Bay-Delta population would significantly truncate the range of the species and result in a significant gap in the species' range. Based on our review of the best available scientific and commercial information, we conclude that the Bay-Delta population meets the significance element of the 1996 DPS policy.

Determination of Distinct Population Segment

Because we have determined that the Bay-Delta population meets both the discreteness and significance elements of the 1996 DPS policy, we find that the Bay-Delta longfin smelt population is a valid DPS and thus is a listable entity under the Act. Therefore, we next evaluate its conservation status in relation to the Act's standards for listing (*i.e.,* is the population segment, when treated as if it were a species, endangered or threatened?).

Distinct Population Segment Five-Factor Analysis

Because the Bay-Delta population of longfin smelt meets the criteria for a DPS, we will now evaluate its status with regard to its potential for listing as endangered or threatened under the five factors enumerated in section 4(a) of the Act. Our evaluation of the Bay-Delta DPS of longfin smelt follows.

Under Summary of Information Pertaining to the Five Factors, we evaluated threats to longfin smelt throughout its range. Much of this rangewide analysis focused on threats to the Bay-Delta population because so little information exists for other parts of the species' range. Although the threats of lack of freshwater flow, contaminants, and invasive species do not rise to the level of being significant threats rangewide, the best available scientific and commercial data indicates that these threats are significant to the species within the Bay-Delta. We utilized the vast amounts of research that have been conducted within the Bay-Delta by the Interagency Ecological Program and University of California at Davis to make our determinations of threats in the Bay-Delta.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Reduced Freshwater Flow

As we discussed above in the rangewide analysis, a primary threat to the Bay-Delta longfin smelt is reduced freshwater flows. In the Bay-Delta, freshwater flow is strongly related to the natural hydrologic cycles of drought and flood. Studies of Bay-Delta longfin smelt have found that increased Delta outflow during the winter and spring is the largest factor positively affecting longfin smelt abundance (Stevens and Miller 1983, pp. 431–432; Jassby *et al.* 1995, p. 285; Sommer *et al.* 2007, p. 274; Thomson *et al.* 2010, pp. 1439–1440). During high outflow periods larvae are believed to benefit from increased transport and dispersal downstream, increased food production, reduced predation through increased turbidity, and reduced loss to entrainment due to a westward shift in the boundary of spawning habitat and strong downstream transport of larvae (CFDG 1992, pp. 45–61; Hieb and Baxter 1993, pp. 106–107; CDFG 2009a, p. 18). Conversely, during low outflow periods, the negative effects of reduced transport and dispersal, reduced turbidity, and potentially increased loss of larvae to predation and increased loss at the export facilities result in lower young-of-the-year recruitment. Despite numerous studies of longfin smelt abundance and flow in the Bay-Delta, the underlying causal mechanisms are still not fully understood (Baxter *et al.* 2010, p. 69; Rosenfield 2010, p. 9).

As California's population has grown, demands for reliable water supplies and flood protection have grown. In response, State and Federal agencies built dams and canals, and captured water in reservoirs, to increase capacity for water storage and conveyance resulting in one of the largest manmade water systems in the world (Nichols *et al.* 1986, p. 569). Operation of this system has altered the seasonal pattern of freshwater flows in the watershed. Storage in the upper watershed of peak runoff and release of the captured water for irrigation and urban needs during subsequent low flow periods result in a broader, flatter hydrograph with less seasonal variability in freshwater flows into the estuary (Kimmerer 2004, p. 15).

In addition to the system of dams and canals built throughout the Sacramento River-San Joaquin River basin, the Bay-Delta is unique in having a large water diversion system located within the estuary (Kimmerer 2002b, p. 1279). The State Water Project (SWP) and Central Valley Project (CVP) operate two water export facilities in the Delta (Sommer *et al.* 2007, p. 272). Project operation and management is dependent upon upstream water supply and export area demands. Despite the size of the water storage and diversion projects, much of the interannual variability in Delta hydrology is due to variability in precipitation from year to year. Annual inflow from the watershed to the Delta is strongly correlated to unimpaired flow (runoff that would hypothetically

occur if upstream dams and diversions were not in existence), mainly due to the effects of high-flow events (Kimmerer 2004, p. 15). Water operations are regulated in part by the California State Water Resources Control Board (SWRCB) according to the Water Quality Control Plan (WQCP) (SWRCB 2000, entire). The WQCP limits Delta water exports in relation to Delta inflow (the Export/Inflow, or E/I ratio).

It is important to note that in the case of the Bay-Delta, freshwater flow is expressed as both Delta inflow (from the rivers into the Delta) and as Delta outflow (from the Delta into the lower estuary), which are closely correlated, but not equivalent. Freshwater flow into the Delta affects the location of the low salinity zone and X2 within the estuary. As longfin smelt spawn in freshwater, they must migrate farther upstream to spawn as flow reductions alter the position of X2 and the low-salinity zone moves upstream (CDFG 2009, p. 17). Longer migration distances into the Bay-Delta make longfin smelt more susceptible to entrainment in the State and Federal water pumps (see Factor E: Entrainment Losses, below). In periods with greater freshwater flow into the Delta, X2 is pushed farther downstream (seaward); in periods with low flows, X2 is positioned farther landward (upstream) in the estuary and into the Delta. Not only is longfin smelt abundance in the Bay-Delta strongly correlated with Delta inflow and X2, but the spatial distribution of longfin smelt larvae is also strongly associated with X2 (Dege and Brown 2004, pp. 58–60; Baxter *et al.* 2010, p. 61). As longfin hatch into larvae, they move from the areas where they are spawned and orient themselves just downstream of X2 (Dege and Brown 2004, pp. 58–60). Larval (winter-spring) habitat varies with outflow and with the location of X2 (CDFG 2009, p. 12), and has been reduced since the 1990s due to a general upstream shift in the location of X2 (Hilts 2012, unpublished data). The amount of rearing habitat (salinity between 0.1 and 18 ppt) is also presumed to vary with the location of X2 (Baxter *et al.* 2010, p. 64). However, as previously stated, the location of X2 is of particular importance to the distribution of newly-hatched larvae and spawning adults. The influence of water project operations from November through April, when spawning adults and newly-hatched larvae are oriented to X2, is greater in drier years than in wetter years (Knowles 2002, p. 7).

In addition to the effects of reduced freshwater flow on habitat suitability for longfin smelt and other organisms in the Bay-Delta, one of the principal concerns over the biological impacts of these water export facilities has been entrainment of fish and other aquatic organisms. For a detailed discussion, see Factor E: Entrainment Losses, below.

Given the observed negative association between the reduction of freshwater outflow and longfin smelt abundance, we consider the current reductions in freshwater outflow to pose a significant threat to the Bay-Delta DPS of longfin smelt. Based on the observed associations in the Bay-Delta between freshwater outflow and longfin abundance, the lack of effective control mechanisms, and projections of freshwater outflow fluctuations, we expect the degree of this threat to continue and likely increase within the foreseeable future. We conclude that lack of freshwater flow is a significant current and future threat to the Bay-Delta DPS of longfin smelt.

Climate Change

Climate change may affect the Bay-Delta DPS of longfin smelt habitat as a result of (1) Changes in the timing and availability of freshwater flow into the estuary due to reduced snowpack and earlier melting of the snowpack; (2) sea level rise and saltwater intrusion into the estuary; (3) effects associated with increased water temperatures; and (4) effects related to changes in frequency and intensity of storms, floods, and droughts. It is difficult to evaluate effects related to changes in the timing and availability of freshwater flow into the estuary due to reduced snowpack and earlier melting of the snowpack because these potential effects will likely be impacted to some extent through decisions on water management in the intensively managed Sacramento River-San Joaquin River water basin. Continued sea level rise will result in saltwater intrusion and landward displacement of the low-salinity zone, which would likely negatively affect longfin smelt habitat suitability. Increasing water temperatures would likely affect distribution and movement patterns of longfin smelt in the estuary; longfin smelt may be displaced to locations with deeper and cooler water temperatures. This displacement may result in decreased survival and productivity. Increased frequency and severity of storms, floods, and droughts could result in reduced longfin smelt habitat suitability, but it is difficult to estimate these effects because of uncertainty about the frequency and severity of these events. However, warming may result in more precipitation falling as rain and less storage as snow, increasing winter runoff as spring runoff decreases (USBR 2011, p. 147).

It is uncertain how a change in the timing and duration of freshwater flows will affect longfin smelt. Higher flows in January and February (peak spawning and hatching months) resulting from snow packs that melt sooner and rain-on-snow events could potentially create better spawning and larval rearing conditions. This would reduce adult migration distance and increase areas of freshwater spawning habitat during these months. In addition, the higher turbidity associated with these flows may reduce predation on longfin smelt adults and larvae (Baxter 2011, pers. comm.). However, if high flows last only a short period, benefits may be negated by poorer conditions before and after the high flows. As the freshwater boundary moves farther inland into the Delta with increasing sea level (see below) and reduced flows, adults will need to migrate farther into the Delta to spawn, increasing the risk of predation and the potential for entrainment into water export facilities and diversions for both themselves and their progeny. Because of the uncertainties surrounding climate change and the potential for increased winter runoff that could benefit longfin smelt, we determined that there is not sufficient information to conclude that climate change threatens the continued existence of the Bay-Delta DPS of longfin smelt.

Channel Disturbances

Channel dredging in the Bay-Delta is an ongoing periodic disturbance of longfin smelt habitat, but most activity occurs in areas where longfin smelt are not likely to be present. We conclude that the effects of ongoing channel maintenance dredging are small and localized and do not rise to a level that would significantly affect the population as a whole.

There is currently a proposal to deepen and selectively widen the Sacramento Deep Water Ship Channel and the lower portion of the Sacramento River in the Bay-Delta. This dredging project would remove between 6.1–7.6 million cubic meters (8 and 10 million cubic yards) of material from the channel and Sacramento River and extend for 74 km (45.8 mi) (USACE 2011a, entire). Potential effects of this new project to longfin smelt include mortality through loss of spawning substrate, habitat modification, and a shift in spawning and rearing habitat. The project also has potential to alter breeding and foraging behavior of the Bay-Delta longfin smelt population. However, this project is only a proposal

at this time and is not certain to occur. Potential effects of the proposed project are currently under evaluation.

Summary of Factor A

In summary, we conclude that the best available scientific and commercial information available indicates that the effects of reduced freshwater flows constitute a current and future threat to the Bay-Delta DPS of longfin smelt. We find that the Bay-Delta DPS of longfin smelt is currently threatened in part due to the present or threatened destruction, modification, or curtailment of its habitat or range due to reduced freshwater flow.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Commercial and Recreational Take

Because of its status as a threatened species under the California Endangered Species Act, take of longfin smelt in the Bay-Delta is illegal, unless authorized by an incidental take permit or other take authorization. However, longfin smelt are caught as bycatch in a small bay shrimp trawl commercial fishery that operates in South San Francisco Bay, San Pablo Bay, and Carquinez Strait (Hieb 2009, p. 1). CDFG (Hieb 2009, pp. 6, 9) estimated the total longfin smelt bycatch from this fishery from 1989–1990 at 15,539 fish, and in 2004 at 18,815–30,574 fish. CDFG noted in 2009 that they thought the bay shrimp trawl fishery had declined since 2004 (Hieb, p. 3) and just recently reported the number of active shrimp permits at less than 10 (Hieb 2011, pers. comm.).

Scientific Take

Within the Bay-Delta, longfin smelt are regularly captured in monitoring surveys. The Interagency Ecological Program (IEP) implements scientific research in the Bay-Delta. Although the focus of its studies and the level of effort have changed over time, in general, their surveys have been directed at researching the Pelagic Organism Decline in the Bay-Delta. Between the years of 1987 to 2011, combined take of longfin smelt less than 20 mm (0.8 in) in length ranged from 2,405 to 158,588 annually. All of these fish were preserved for research or assumed to die in processing. During the same time period, combined take for juveniles and adults (fish greater than or equal to 20 mm (0.8 in)) ranged from 461 to 68,974 annually (IEP 2011). Although mortality is unknown, the majority of these fish likely do not survive. The Chipps Island survey, which is conducted by the Service, has captured an average of 2,697 longfin smelt per year during the past 10 years. Biologists attempt to release these fish unharmed, but at least 5,154 longfin smelt were known to have died during the Chipps Island survey between 2001 and 2008 (Service 2010, entire).

Incidental take from bycatch and monitoring surveys has not been identified as a possible factor related to recent longfin smelt population declines in the Bay-Delta (Baxter *et al.* 2010, pp. 61–69). CDFG (2009, p. 32) recommended adaptively managing scientific collection of longfin smelt to avoid adverse population effects, and survey methods have been modified recently to minimize potential impacts to delta smelt (75 FR 17669; April 7, 2010). These modifications likely have resulted in reduced impacts to longfin smelt. Based on the best scientific and commercial information, we conclude that the Bay-Delta DPS of longfin smelt is not currently threatened by overutilization for commercial, recreational, scientific, or educational purposes, nor do we anticipate overutilization posing a significant threat in the future.

Factor C. Disease or Predation

Disease

Little information is available on incidence of disease in the Bay-Delta longfin smelt DPS. Larval and juvenile longfin smelt were collected from the Bay-Delta in 2006 and 2007 and analyzed for signs of disease and parasites (Foott and Stone 2006, entire; Foott and Stone 2007, entire). No significant health problem was detected in either year (Foott and Stone 2007, p. 15). The south Delta is fed by water from the San Joaquin River, where pesticides (e.g., chlorpyrifos, carbofuran, and diazinon), salts (*e.g.,* sodium sulfates), trace elements (boron and selenium), and high levels of total dissolved solids are prevalent due to agricultural runoff (64 FR 5963; February 8, 1999). Pesticides and other toxic chemicals may adversely affect the immune system of longfin smelt and other fish in the Bay-Delta and other estuaries, but we found no information documenting such effects.

Predation

Striped bass were introduced into the Bay-Delta in 1879 and quickly became abundant throughout the estuary. However, their numbers have declined substantially over the last 40 years (Thomson *et al.* 2010, p. 1440), and they are themselves one of the four species studied under Pelagic Organism Decline investigations (Baxter *et al.* 2010, p. 16). Numbers of largemouth bass, another introduced species in the Bay-Delta, have increased in the Delta over the past few decades (Brown and Michniuk 2007, p. 195). Largemouth bass, however, occur in shallow freshwater habitats, closer to shore than the pelagic longfin smelt, and so do not tend to co-occur with longfin for much of their life history. Baxter *et al.* (2010, p. 40) reported that no longfin smelt have been found in largemouth bass stomachs sampled in a recent study of largemouth bass diet. Moyle (2002, p. 238) believed that inland silverside, another nonnative predatory fish, may be an important predator on longfin eggs and larvae, but Rosenfield *et al.* (2010, p. 18) believed that to be unlikely because inland silversides prefer shallow water habitats where juvenile and subadult longfin smelt are rare.

In the Bay-Delta, predation of longfin smelt may be high in the Clifton Court Forebay, where the SWP water export pumping plant is located (Moyle 2002, p. 238; Baxter *et al.* 2010, p. 42). However, once they are entrained in the Clifton Court Forebay, longfin smelt mortality would be high anyway due to high water temperatures in the Forebay (CDFG 2009b, p. 4) and entrainment into the SWP water export pumping plant. In addition to elevated predation levels in the Clifton Court Forebay, predation also is concentrated at sites where fish salvaged from the SWP and CVP export facilities are released (Moyle 2002, p. 238). However, few longfin smelt survive the salvage and transport process (see Factor E: Entrainment Losses, below), and therefore predation is not expected to be an important factor at drop off sites. As discussed above, reduced freshwater flows may result in lower turbidity and increased water clarity (see discussion under DPS' Factor A), which may contribute to increased risk of predation (Baxter *et al.* 2010, p. 64).

Based on a review of the best available scientific and commercial information, we conclude that disease does not constitute a threat to the Bay-Delta longfin smelt DPS. Available information indicates that Bay-Delta longfin smelt experience elevated levels of predation near the water diversions at the SWP and CVP water export facilities in the south Delta and at the salvage release sites. Reduced freshwater flows resulting from water diversions result in increased water clarity, and increased water clarity may result in increased predation risks to longfin smelt.

In summary, striped bass predation is in decline and largemouth bass predation is unlikely a threat because of

the minimal overlap in time and space of largemouth bass and longfin smelt. Therefore, the current rates of predation on longfin smelt are not expected to be having a substantial effect on the overall population level. Based on the best available scientific and commercial information, we conclude that neither disease nor predation are significant current or future threats to the Bay-Delta longfin smelt DPS.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Existing Federal and State regulatory mechanisms discussed under Factor D of the rangewide analysis that provide protections or reduce threats to the Bay-Delta DPS of longfin smelt include: California Endangered Species Act, Porter-Cologne Water Quality Control Act, California Marine Invasive Species Act, Central Valley Project Improvement Act, and Clean Water Act (including the National Pollutant Discharge Elimination System). Several of these regulatory mechanisms provide important protections for the Bay-Delta DPS of longfin smelt and act to reduce threats, such as reduction of freshwater outflow, the invasion of the overbite clam and ammonia discharges (See Factors A, above, and E, below).

The longfin smelt was listed under the California Endangered Species Act as threatened throughout its range in California on March 5, 2009 (CDFG 2009, p. V). CESA does allow take of species for otherwise lawful projects through use of an incidental take permit. A take permit requires that impacts be minimized and fully mitigated (CESA sections 2081 (b) and (c)). Furthermore, the CESA ensures through the issuance of a permit for a project that may affect longfin smelt or its habitat, that the project will not jeopardize the continued existence of a State-listed species.

The Porter-Cologne Water Quality Control Act is the California State law that establishes the State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards that are responsible for the regulation of activities and factors that could degrade California water quality and for the allocation of surface water rights. The State Water Resources Control Board Water Rights Decision 1641 (D–1641) imposes flow and water quality standards on the State and Federal water export facilities to assure protection of beneficial uses in the Delta (FWS 2008, pp. 21–27). The various flow objectives and export restraints are designed, in part, to protect fisheries. These objectives include specific outflow requirements throughout the year, specific water export restraints in the spring, and water export limits based on a percentage of estuary inflow throughout the year. The water quality objectives are designed to protect agricultural, municipal, industrial, and fishery uses; they vary throughout the year and by the wetness of the year. These protections have had limited effectiveness in providing adequate freshwater flows within the Delta. Lack of freshwater outflow continues to be the primary contributing factor to the decline of the longfin smelt in the Bay-Delta (see Factor A, above, for further discussion).

The California Marine Invasive Species Act requires ballast water management for all vessels that intend to discharge ballast water in California waters. All qualifying vessels coming from ports within the Pacific Coast region must conduct an exchange in waters at least 50 nautical mi offshore and 200 m (656 ft) deep or retain all ballast water and associated sediments. To determine the effectiveness of the management provisions of the this State act, the legislation also requires State agencies to conduct a series of biological surveys to monitor new introductions to coastal and estuarine waters. These measures should further minimize the introduction of new invasive species into California's coastal waters that could be a threat to the longfin smelt.

The Central Valley Project Improvement Act amends the previous Central Valley Project authorizations to include fish and wildlife protection, restoration, and mitigation as project purposes having equal priority with irrigation and domestic uses, and fish and wildlife enhancement as having an equal priority with power generation. Included in CVPIA section 3406 (b)(2) was a provision to dedicate 800,000 acre-feet of Central Valley Project yield annually (referred to as ''(b)(2) water'') for fish, wildlife, and habitat restoration. Since 1993, (b)(2) water has been used and supplemented with acquired environmental water (Environmental Water Account and CVPIA section 3406 (b)(3) water) to increase stream flows and reduce Central Valley Project export pumping in the Delta. These management actions were taken to contribute to the CVPIA salmonid population doubling goals and to protect Delta smelt and their habitat (Guinee 2011, pers. comm.). As discussed above (under Biology and Factor A), increased freshwater flows have been shown to be positively correlated with longfin smelt abundance; therefore, these management actions, although targeted towards other species, should also benefit longfin smelt.

The Clean Water Act (CWA) provides the basis for the National Pollutant Discharge Elimination System (NPDES). The CWA gives the EPA the authority to set effluent limits and requires any entity discharging pollutants to obtain a NPDES permit. The EPA is authorized through the CWA to delegate the authority to issue NPDES Permits to State governments. In States that have been authorized to implement CWA programs, the EPA still retains oversight responsibilities (EPA 2011, p. 1). California is one of these States to which the EPA has delegated CWA authority. The Porter-Cologne Water Quality Control Act established the California State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards that are now responsible for issuing these NPDES permits, including permits for the discharge of effluents such as ammonia. The SWRCB is responsible for regulating activities and factors that could degrade California water quality (California Water Code Division 7, section 13370–13389).

The release of ammonia into the estuary is having detrimental effects on the Delta ecosystem and food chain (see Factor E, below). The release of ammonia is controlled primarily by the CWA (Federal law) and secondarily through the Porter-Cologne Water Quality Control Act (State law). EPA is currently updating freshwater discharge criteria that will include new limits on ammonia (EPA 2009, pp. 1–46). An NPDES permit for the Sacramento Regional Wastewater Treatment Plant, a major discharger, was prepared by the California Central Valley Regional Water Quality Control Board in the fall of 2010, with new ammonia limitations intended to reduce loadings to the Delta. The permit is currently undergoing appeal, but it is likely that the new ammonia limits will take effect in 2020. Until that time, CWA protections for longfin smelt are limited, and do not reduce the current threat to longfin smelt.

Summary of Factor D

A number of Federal and State regulatory mechanisms exist that can provide some protections for the Bay-Delta DPS of longfin smelt. However, the continued decline in longfin smelt trend indicators suggests that existing regulatory mechanisms, as currently implemented, are not adequate to reduce threats to the species. Therefore, based on a review of the best scientific information available, we conclude that

existing regulatory mechanisms are not sufficient to protect the species.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Other factors affecting the continued existence of the Bay-Delta DPS of longfin smelt are entrainment losses due to water diversions, introduced species, and contaminants (see Factor E of the Summary of Information Pertaining to the Five Factors section, above).

Entrainment Losses Due to Water Diversions

Entrainment losses at the SWP and CVP water export facilities are a known source of mortality of longfin smelt and other pelagic fish species in the Bay Delta, although the full magnitude of entrainment losses and population-level implications of these losses is still not fully understood. High entrainment losses of longfin smelt and other Bay-Delta pelagic fish between 2000 and 2005 correspond with high volumes of water exports during winter (Baxter *et al.* 2010, p. 63). Baxter *et al.* (2010, p. 62) hypothesize that entrainment is having an important effect on the longfin smelt population during winter, particularly during years with low freshwater flows when a higher proportion of the population may spawn farther upstream in the Delta. However, Baxter *et al.* (2010, p. 63) conclude that these losses have yet to be placed in a population context, and no conclusions can be drawn regarding their effects on recent longfin smelt abundance. CDFG (2009, p. 22) believes that efforts to reduce past delta smelt entrainment loss through the implementation of the 2008 delta smelt biological opinion for SWP and CVP operations may have reduced longfin smelt entrainment losses, incidentally providing a benefit to the longfin smelt. These efforts to manage entrainment losses in drier years, when entrainment risk is greater, substantially reduce the threat of entrainment for longfin smelt.

Estimates of entrainment have shown that it may have been a threat to the Bay-Delta longfin smelt DPS in the past. Fujimura (2009) estimated cumulative longfin smelt entrainment at the SWP facility between 1993 and 2008 at 1,376,432 juveniles and 11,054 adults, and estimated that 97.6 percent of juveniles and 95 percent of adults entrained were lost. Fujimura (2009) estimated cumulative longfin entrainment at the CVP facility between 1993 and 2008 at 224,606 juveniles and 1,325 adults, and estimated that 85.2 percent of the juveniles and 82.1 percent of the adults entrained were lost. These estimated losses are 4 times higher than observed salvage at the CVP and 21 times higher than the actual salvage numbers at the SWP (Fujimura 2009, p. 2). The estimated entrainment numbers were much higher than the actual salvage numbers at the SWP, due in large part to the high pre-screen losses in the Clifton Court Forebay (CDFG 2009a, p. 21). It should be noted that these estimates were calculated using equations and parameters devised for other species and may not accurately estimate longfin smelt losses. Further, estimates may be misleading because the majority of estimated losses occurred during the dry year of 2002 (1.1 million juveniles estimated at the SWP) while during all other years estimated entrainment was below 70,000 individuals.

Entrainment is no longer considered a threat to longfin in the Bay-Delta because of current regulations. Efforts to reduce delta smelt entrainment loss through the implementation of the 2008 delta smelt biological opinion and the listing of longfin smelt under the CESA have likely reduced longfin smelt entrainment losses. The high rate of entrainment that occurred in 2002 that threatened the Bay Delta longfin smelt DPS is very unlikely to recur, and would no longer be allowed under today's regulations because limits on longfin smelt take due to CESA regulations (see DPS' Factor D discussion, above) would trigger reductions in the magnitude of reverse flows.

Although larval and adult longfin smelt are lost as a result of entrainment in the water export facilities in the Delta, we conclude that the risk of entrainment is generally greatest when X2 is upstream and export volumes from the CVP and SWP pumps are high. Therefore, we have determined that longfin smelt are not currently threatened by entrainment, nor do we anticipate longfin smelt will be threatened by entrainment in the future.

Introduced Species

In Suisun Bay, a key longfin smelt rearing area, phytoplankton biomass is influenced by the overbite or Amur River clam. A sharp decline in phytoplankton biomass occurred following the invasion of the estuary by this species, even though nutrients were not found to be limiting (Alpine and Cloern 1992, pp. 950–951). Abundance of zooplankton decreased across several taxa, and peaks that formerly occurred in time and space were absent, reduced or relocated after 1987 (Kimmerer and Orsi 1996, p. 412). The general decline in phytoplankton and zooplankton is likely affecting longfin smelt by decreasing food supply for their prey species, such as *N. mercedis* (Kimmerer and Orsi 1996, pp. 418–419). Models indicate that the longfin smelt abundance index has been on a steady linear decline since about the time of the invasion of the non-native overbite (or Amur) clam in 1987 (Rosenfield and Swanson 2010, p. 14).

Given the observed negative association between the introduction of the overbite clam and longfin smelt abundance in the Bay-Delta and the documented decline of key longfin smelt prey items, we consider the current overbite clam population to pose a significant threat to the Bay-Delta DPS of longfin smelt. Based on the observed associations in the Bay-Delta between overbite clam invasion and longfin abundance and the lack of effective control mechanisms, we expect the degree of this threat will continue into the foreseeable future. The Bay-Delta has numerous other invasive species that have disrupted ecosystem dynamics; however, only the overbite clam has been shown to have an impact on the longfin smelt population. We consider the overbite clam to be a significant ongoing threat to the Bay-Delta longfin smelt population.

Contaminants

Extensive research on the role of contaminants in the Pelagic Organism Decline is currently being conducted (Baxter *et al.* 2010, pp. 28–36). Of potential concern are effects of high levels of mercury and other metals; high ammonium concentrations from municipal wastewater; potentially harmful cyanobacteria algal blooms; and pesticides, especially pyrethroid pesticides, which are heavily used in San Joaquin Valley agriculture. Contaminants may have direct toxic effects to longfin smelt and other pelagic fish and indirect effects as a result of impacts to prey abundance and composition. Ammonium has been shown to impact longfin smelt habitat by affecting primary production and prey abundance within the Bay-Delta (Dugdale *et al.* 2007, p. 26). While contaminants are suspected of playing a role in declines of pelagic fish species in the Bay-Delta (Baxter *et al.* 2010, p. 28), contaminant effects remain unresolved.

The largest source of ammonia entering the Delta ecosystem is the Sacramento Regional Wastewater Treatment Plant (SRWTP), which accounts for 90 percent of the total ammonia load released into the Delta. Ammonia is un-ionized and has the chemical formula NH_3. Ammonium is

ionized and has the formula NH_4^+. The major factors determining the proportion of ammonia or ammonium in water are water pH and temperature. This is important, as NH_3 ammonia is the form that can be directly toxic to aquatic organisms, and NH_4+ ammonium is the form documented to interfere with uptake of nitrates by phytoplankton (Dugdale *et al.* 2007, p. 17; Jassby 2008, p. 3).

In addition to potential direct effects on fish, ammonia in the form of ammonium has been shown to alter the food web by adversely impacting phytoplankton and zooplankton dynamics in the estuary ecosystem. Historical data suggest that decreases in Suisun Bay phytoplankton biomass coincide with increased ammonia discharge by the SRWTP (Parker *et al.* 2004, p. 7; Dugdale *et al.* 2011, p. 1). Phytoplankton preferentially take up ammonium over nitrate when it is present in the water. Ammonium is insufficient to provide for growth in phytoplankton, and uptake of ammonium to the exclusion of nitrate results in decreases in phytoplankton biomass (Dugdale *et al.* 2007, p. 23). Therefore, ammonium impairs primary productivity by reducing nitrate uptake in phytoplankton. Ammonium's negative effect on the food web has been documented in the longfin smelt rearing areas of San Francisco Bay and Suisun Bay (Dugdale *et al.* 2007, pp. 27–28). Decreased primary productivity results in less food available to longfin smelt and other fish in these bays.

In summary, although no direct link has been made between contaminants and longfin smelt (Baxter *et al.* 2010, p. 68), ammonium has been shown to have a direct effect on the food supply that the Bay-Delta longfin smelt DPS relies upon. Therefore, we conclude that high ammonium concentrations may be a significant current and future threat to the Bay-Delta DPS of longfin smelt.

Summary of Factor E

The best available information indicates that introduced species constitute a threat to the Bay-Delta DPS of longfin smelt and that and contaminants (high ammonium concentrations) may constitute a threat to the Bay-Delta DPS of longfin smelt. Entrainment is a potential threat to the DPS, but information currently available does not indicate that entrainment threatens the continued existence of the Bay-Delta longfin smelt population. Although entrainment results in mortality of longfin smelt, Baxter *et al.* (2010, p. 63) concluded that these losses have yet to be placed in a population context, and no conclusions can be drawn regarding their effects on recent longfin smelt abundance. Therefore, based on the best scientific evidence available, we conclude that the Bay-Delta longfin smelt DPS is threatened in part due to other natural or manmade factors including the nonnative overbite clam and high ammonium concentrations.

Finding

This status review identified threats to the Bay-Delta DPS of longfin smelt attributable to Factors A, D, and E, as well as interactions between these threats. The primary threat to the DPS is from reduced freshwater flows. Upstream dams and water storage exacerbated by water diversions, especially from the SWP and CVP water export facilities, result in reduced freshwater flows within the estuary, and these reductions in freshwater flows result in reduced habitat suitability for longfin smelt (Factor A). Freshwater flows, especially winter-spring flows, are significantly correlated with longfin smelt abundance—longfin smelt abundance is lower when winter-spring flows are lower. While freshwater flows have been shown to be significantly correlated with longfin smelt abundance, causal mechanisms underlying this correlation are still not fully understood and are the subject of ongoing research on the Pelagic Organism Decline.

In addition to the threat caused by reduced freshwater flow into the Bay-Delta, and alteration of natural flow regimes resulting from water storage and diversion, there appear to be other factors contributing to the Pelagic Organism Decline (Baxter 2010 *et al.,* p. 69). Models indicate a steady linear decline in abundance of longfin smelt since about the time of the invasion of the nonnative overbite clam in 1987 (Rosenfield and Swanson 2010, pp. 13–14; see Factor E: Introduced Species) in the Bay-Delta. However, not all aspects of the longfin smelt decline can be attributed to the overbite clam invasion, as a decline in abundance of pre-spawning adults in Suisun Marsh occurred before the invasion of the clam, and a partial rebound in longfin smelt abundance occurred in the early 2000s (Rosenfield and Baxter 2007, p. 1589).

The long-term decline in abundance of longfin smelt in the Bay-Delta has been partially attributed to reductions in food availability and disruptions of the Bay-Delta food web caused by establishment of the nonnative overbite clam in 1987 (Factor E) and ammonium concentrations (Factor E). Impacts of the overbite clam and ammonium on the Bay-Delta food web have been long-lasting and are ongoing. We conclude that ongoing disruptions of the food web caused by the overbite clam are a threat to the continued existence of the Bay-Delta DPS of longfin smelt. We also conclude that high ammonium concentrations in the Bay-Delta may constitute a threat to the continued existence of the overbite clam.

Multiple existing Federal and State regulatory mechanisms provide important protections for the Bay-Delta DPS of longfin smelt and act to reduce threats to the DPS. However, the continued decline in the abundance of the Bay-Delta longfin smelt DPS indicates that existing regulatory mechanisms, as currently implemented, are not adequate to sufficiently reduce threats identified in this finding. Therefore, we find that inadequate existing regulatory mechanisms contribute to threats faced by the Bay-Delta longfin smelt DPS.

The threats identified are likely acting together to contribute to the decline of the population (Baxter *et al.* 2010, p. 69). Reduced freshwater flows result in effects to longfin smelt habitat suitability, at the same time that the food web has been altered by introduced species and ammonium concentrations. It is possible that climate change could exacerbate these threats; however, due to uncertainties of how longfin smelt will respond to climate change effects, we cannot conclude that climate change will threaten the continued existence of the Bay-Delta longfin smelt DPS. The combined effects of reduced freshwater flows, the invasive overbite clam (reduced levels of phytoplankton and zooplankton that are important to the Bay-Delta food web), and high ammonium concentrations act to significantly reduce habitat suitability for longfin smelt.

The best scientific and commercial information available indicates that the threats facing the Bay-Delta DPS of longfin smelt are of sufficient imminence, intensity and magnitude to threaten the continued existence of the species now or in the foreseeable future. Therefore, we find that listing the Bay-Delta longfin smelt DPS is warranted. We will make a determination on the status of the DPS as endangered or threatened when we prepare a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the DPS is not warranted at this time because the threats are not of sufficient magnitude and imminence to pose an immediate threat to the continued existence of the DPS. However, if at any time we determine that issuing an emergency regulation temporarily listing the Bay-Delta DPS of longfin smelt is warranted, we will initiate this action at that time.

Significant Portion of Its Range

The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines ''species'' as ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature'' (16 U.S.C. 1532(16)). The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, April 2, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. September 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, February 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a ''species,'' as defined by the Act (*i.e.,* species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that once a determination is made that a species (i.e., species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: a species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species will be listed as endangered or threatened, respectively, and the Act's protections will be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the SPR phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice (i.e., prior to the 2007 Solicitor's Opinion), as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether *without that portion,* the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be ''endangered''). Conversely, we would

not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' (a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be *currently* imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, *i.e.,* if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be endangered; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' *and* (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

We have determined that the longfin smelt does not face elevated threats in most portions of its range, and we have determined that the portion of the range that has concentrated threats (the Bay-Delta portion of the range) is a DPS. The rangewide five factor analysis for longfin smelt does not identify any portions of the species' range outside of Bay-Delta where threats are concentrated. Potential threats to the species are by and large uniform throughout its range with the exception of the Bay-Delta. Therefore, we will not further consider the Bay-Delta DPS as an SPR.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098) to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates (DPS)). As a result of our analysis of the best available scientific and commercial information, we assign the Bay-Delta DPS of longfin smelt a listing priority number of 3, based on the high magnitude and immediacy of threats. A number three listing priority is the highest listing allowed for a DPS under the current listing priority guidance. One or more of the threats discussed above are occurring (or we anticipate they will occur in the near future) within the range of the Bay-Delta DPS of the longfin smelt. These threats are ongoing and, in some cases (such as nonnative species), are considered irreversible. While we conclude that listing the Bay-Delta DPS of longfin smelt is warranted, an immediate proposal to list this species is precluded by other higher priority listings, which we address below.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost

and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual ''resubmitted'' petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program (''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. At this time, for FY 2012, we plan to use some of the critical habitat subcap funds to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Public Law 97–304 (Endangered Species Act Amendments of 1982), which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise.'' Although that statement appeared to refer specifically to the ''to the maximum extent practicable'' limitation on the 90-day deadline for making a ''substantial information'' finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2011, on April 15, 2011, Congress passed the Full-Year Continuing Appropriations Act (Pub. L. 112–10), which provided funding through September 30, 2011. The Service had $20,902,000 for the listing program. Of that, $9,472,000 was used for determinations of critical habitat for already listed species. Also $500,000 was appropriated for foreign species listings under the Act. The Service thus had $10,930,000 available to fund work in the following categories: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In FY 2010, the Service received many new petitions and a single petition to list 404 species. The receipt of petitions for a large number of species is consuming the Service's listing funding that is not dedicated to meeting court-ordered commitments. Absent some ability to balance effort among listing duties under existing funding levels, the Service was only able to initiate a few new listing determinations for candidate species in FY 2011. For FY 2012, on December 17, 2011, Congress passed a continuing resolution which provides funding at the FY 2011 enacted level with a 1.5 percent rescission through December 23, 2011 (Pub. L. 112–68). Until Congress appropriates funds for FY 2012, we will fund listing work

based on the FY 2011 amount minus the 1.5 percent.

In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we used a portion of our funding to work on the actions described above for listing actions related to foreign species. In FY 2011, we anticipated using $1,500,000 for work on listing actions for foreign species, which reduces funding available for domestic listing actions; however, only $500,000 was allocated for this function. Although there are no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service's FY 2011 and FY 2012 Allocation Tables (part of our record).

For the above reasons, funding a proposed listing determination for the Bay-Delta DPS of longfin smelt is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, and work on proposed listing determinations for those candidate species with a higher listing priority (i.e., candidate species with LPNs of 1 or 2).

Based on our September 21, 1983, guidelines for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with a LPN of 2. Using these guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: Monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species (''Top 40''). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with LPNs of 2 and 3 to determine the next set of highest priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered species are lower priority, because as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our ''precluded'' finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. During FY 2011, we completed delisting rules for three species.) Given the limited resources available for listing, we find that we made expeditious progress in FY 2011 and are making expeditious progress in FY 2012 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2011 AND FY 2012 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR Pages
10/6/2010	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Proposed Listing Endangered	75 FR 61664–61690
10/7/2010	12-month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 62070–62095
10/28/2010	Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow.	Proposed Listing Endangered (uplisting).	75 FR 66481–66552
11/2/2010	90-Day Finding on a Petition to List the Bay Springs Salamander as Endangered.	Notice of 90-day Petition Finding, Not substantial.	75 FR 67341–67343
11/2/2010	Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat.	Final Listing Endangered	75 FR 67511–67550
11/2/2010	Listing the Rayed Bean and Snuffbox as Endangered.	Proposed Listing Endangered	75 FR 67551–67583
11/4/2010	12-Month Finding on a Petition to List Cirsium wrightii (Wright's Marsh Thistle) as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 67925–67944

FY 2011 AND FY 2012 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
12/14/2010	Endangered Status for Dunes Sagebrush Lizard	Proposed Listing Endangered	75 FR 77801–77817
12/14/2010	12-month Finding on a Petition to List the North American Wolverine as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78029–78061
12/14/2010	12-Month Finding on a Petition to List the Sonoran Population of the Desert Tortoise as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78093–78146
12/15/2010	12-Month Finding on a Petition to List *Astragalus microcymbus* and *Astragalus schmolliae* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78513–78556
12/28/2010	Listing Seven Brazilian Bird Species as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 81793–81815
1/4/2011	90-Day Finding on a Petition to List the Red Knot subspecies *Calidris canutus roselaari* as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 304–311
1/19/2011	Endangered Status for the Sheepnose and Spectaclecase Mussels.	Proposed Listing Endangered	76 FR 3392–3420
2/10/2011	12-Month Finding on a Petition to List the Pacific Walrus as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 7634–7679
2/17/2011	90-Day Finding on a Petition To List the Sand Verbena Moth as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 9309–9318
2/22/2011	Determination of Threatened Status for the New Zealand-Australia Distinct Population Segment of the Southern Rockhopper Penguin.	Final Listing Threatened	76 FR 9681–9692
2/22/2011	12-Month Finding on a Petition to List *Solanum conocarpum* (marron bacora) as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 9722–9733
2/23/2011	12-Month Finding on a Petition to List Thorne's Hairstreak Butterfly as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 9991–10003
2/23/2011	12-Month Finding on a Petition to List *Astragalus hamiltonii, Penstemon flowersii, Eriogonum soredium, Lepidium ostleri,* and *Trifolium friscanum* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded & Not Warranted.	76 FR 10166–10203
2/24/2011	90-Day Finding on a Petition to List the Wild Plains Bison or Each of Four Distinct Population Segments as Threatened.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10299–10310
2/24/2011	90-Day Finding on a Petition to List the Unsilvered Fritillary Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10310–10319
3/8/2011	12-Month Finding on a Petition to List the Mt. Charleston Blue Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 12667–12683
3/8/2011	90-Day Finding on a Petition to List the Texas Kangaroo Rat as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 12683–12690
3/10/2011	Initiation of Status Review for Longfin Smelt	Notice of Status Review	76 FR 13121–13122
3/15/2011	Withdrawal of Proposed Rule to List the Flat-tailed Horned Lizard as Threatened.	Proposed rule withdrawal	76 FR 14210–14268
3/15/2011	Proposed Threatened Status for the Chiricahua Leopard Frog and Proposed Designation of Critical Habitat.	Proposed Listing Threatened; Proposed Designation of Critical Habitat.	76 FR 14126–14207
3/22/2011	12-Month Finding on a Petition to List the Berry Cave Salamander as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 15919–15932
4/1/2011	90-Day Finding on a Petition to List the Spring Pygmy Sunfish as Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 18138–18143
4/5/2011	12-Month Finding on a Petition to List the Bearmouth Mountainsnail, Byrne Resort Mountainsnail, and Meltwater Lednian Stonefly as Endangered or Threatened.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR 18684–18701
4/5/2011	90-Day Finding on a Petition To List the Peary Caribou and Dolphin and Union population of the Barren-ground Caribou as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 18701–18706
4/12/2011	Proposed Endangered Status for the Three Forks Springsnail and San Bernardino Springsnail, and Proposed Designation of Critical Habitat.	Proposed Listing Endangered; Proposed Designation of Critical Habitat.	76 FR 20464–20488
4/13/2011	90-Day Finding on a Petition To List Spring Mountains Acastus Checkerspot Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 20613–20622
4/14/2011	90-Day Finding on a Petition to List the Prairie Chub as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 20911–20918
4/14/2011	12-Month Finding on a Petition to List Hermes Copper Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 20918–20939
4/26/2011	90-Day Finding on a Petition to List the Arapahoe Snowfly as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 23256–23265

FY 2011 AND FY 2012 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
4/26/2011	90-Day Finding on a Petition to List the Smooth-Billed Ani as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 23265–23271
5/12/2011	Withdrawal of the Proposed Rule to List the Mountain Plover as Threatened.	Proposed Rule, Withdrawal	76 FR 27756–27799
5/25/2011	90-Day Finding on a Petition To List the Spot-tailed Earless Lizard as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 30082–30087
5/26/2011	Listing the Salmon-Crested Cockatoo as Threatened Throughout its Range with Special Rule.	Final Listing Threatened	76 FR 30758–30780
5/31/2011	12-Month Finding on a Petition to List Puerto Rican Harlequin Butterfly as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 31282–31294
6/2/2011	90-Day Finding on a Petition to Reclassify the Straight-Horned Markhor (*Capra falconeri jerdoni*) of Torghar Hills as Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 31903–31906
6/2/2011	90-Day Finding on a Petition to List the Golden-winged Warbler as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 31920–31926
6/7/2011	12-Month Finding on a Petition to List the Striped Newt as Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 32911–32929
6/9/2011	12-Month Finding on a Petition to List *Abronia ammophila, Agrostis rossiae, Astragalus proimanthus, Boechera (Arabis) pusilla,* and *Penstemon gibbensii* as Threatened or Endangered.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR 33924–33965
6/21/2011	90-Day Finding on a Petition to List the Utah Population of the Gila Monster as an Endangered or a Threatened Distinct Population Segment.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36049–36053
6/21/2011	Revised 90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36053–36068
6/28/2011	12-Month Finding on a Petition to List *Castanea pumila* var. *ozarkensis* as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 37706–37716
6/29/2011	90-Day Finding on a Petition to List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 38095–38106
6/30/2011	12-Month Finding on a Petition to List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	76 FR 38504–38532
7/12/2011	90-Day Finding on a Petition to List the Bay Skipper as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 40868–40871
7/19/2011	12-Month Finding on a Petition to List *Pinus albicaulis* as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 42631–42654
7/19/2011	Petition To List Grand Canyon Cave Pseudoscorpion.	Notice of 12-month petition finding, Not warranted.	76 FR 42654–42658
7/26/2011	12-Month Finding on a Petition to List the Giant Palouse Earthworm (*Drilolerius americanus*) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 44547–44564
7/26/2011	12-month Finding on a Petition to List the Frigid Ambersnail as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 44566–44569
7/27/2011	Determination of Endangered Status for *Ipomopsis polyantha* (Pagosa Skyrocket) and Threatened Status for *Penstemon debilis* (Parachute Beardtongue) and *Phacelia submutica* (DeBeque Phacelia).	Final Listing Endangered, Threatened	76 FR 45054–45075
7/27/2011	12-Month Finding on a Petition to List the Gopher Tortoise as Threatened in the Eastern Portion of its Range.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 45130–45162
8/2/2011	Proposed Endangered Status for the Chupadera Springsnail (*Pyrgulopsis chupaderae*) and Proposed Designation of Critical Habitat.	Proposed Listing Endangered	76 FR 46218–46234
8/2/2011	90-Day Finding on a Petition to List the Straight Snowfly and Idaho Snowfly as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 46238–46251
8/2/2011	12-Month Finding on a Petition to List the Redrock Stonefly as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 46251–46266
8/2/2011	Listing 23 Species on Oahu as Endangered and Designating Critical Habitat for 124 Species.	Proposed Listing Endangered	76 FR 46362–46594
8/4/2011	90-Day Finding on a Petition To List Six Sand Dune Beetles as Endangered or Threatened.	Notice of 90-day Petition Finding, Not substantial and substantial.	76 FR 47123–47133
8/9/2011	Endangered Status for the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace.	Final Listing Endangered	76 FR 48722–48741

FY 2011 AND FY 2012 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
8/9/2011	12-Month Finding on a Petition to List the Nueces River and Plateau Shiners as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 48777–48788
8/9/2011	Four Foreign Parrot Species [crimson shining parrot, white cockatoo, Philippine cockatoo, yellow-crested cockatoo].	Proposed Listing Endangered and Threatened; Notice of 12-month petition finding, Not warranted.	76 FR 49202–49236
8/10/2011	Proposed Listing of the Miami Blue Butterfly as Endangered, and Proposed Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Proposed Listing Endangered Similarity of Appearance.	76 FR 49408–49412
8/10/2011	90-Day Finding on a Petition To List the Saltmarsh Topminnow as Threatened or Endangered Under the Endangered Species Act.	Notice of 90-day Petition Finding, Substantial.	76 FR 49412–49417
8/10/2011	Emergency Listing of the Miami Blue Butterfly as Endangered, and Emergency Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Emergency Listing Endangered and Similarity of Appearance.	76 FR 49542–49567
8/11/2011	Listing Six Foreign Birds as Endangered Throughout Their Range.	Final Listing Endangered	76 FR 50052–50080
8/17/2011	90-Day Finding on a Petition to List the Leona's Little Blue Butterfly as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 50971–50979
9/01/2011	90-Day Finding on a Petition to List All Chimpanzees (*Pan troglodytes*) as Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 54423–54425
9/6/2011	12-Month Finding on Five Petitions to List Seven Species of Hawaiian Yellow-faced Bees as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 55170–55203
9/8/2011	12-Month Petition Finding and Proposed Listing of *Arctostaphylos franciscana* as Endangered.	Notice of 12-month petition finding, Warranted; Proposed Listing Endangered.	76 FR 55623–55638
9/8/2011	90-Day Finding on a Petition To List the Snowy Plover and Reclassify the Wintering Population of Piping Plover.	Notice of 90-day Petition Finding, Not substantial.	76 FR 55638–55641
9/13/2011	90-Day Finding on a Petition To List the Franklin's Bumble Bee as Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 56381–56391
9/13/2011	90-Day Finding on a Petition to List 42 Great Basin and Mojave Desert Springsnails as Threatened or Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial and Not substantial.	76 FR 56608–56630
9/21/2011	12-Month Finding on a Petition to List Van Rossem's Gull-billed Tern as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 58650–58680
9/22/2011	Determination of Endangered Status for Casey's June Beetle and Designation of Critical Habitat.	Final Listing Endangered	76 FR 58954–58998
9/27/2011	12-Month Finding on a Petition to List the Tamaulipan Agapema, *Sphingicampa blanchardi* (no common name), and *Ursia furtiva* (no common name) as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 59623–59634
9/27/2011	Partial 90-Day Finding on a Petition to List 404 Species in the Southeastern United States as Endangered or Threatened With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	76 FR 59836–59862
9/29/2011	90-Day Finding on a Petition to List the American Eel as Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 60431–60444
10/4/2011	12-Month Finding on a Petition to List the Lake Sammamish Kokanee Population of *Oncorhynchus nerka* as an Endangered or Threatened Distinct Population Segment.	Notice of 12-month petition finding, Not warranted.	76 FR 61298–61307
10/4/2011	12-Month Finding on a Petition to List *Calopogon oklahomensis* as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 61307–61321
10/4/2011	12-Month Finding on a Petition To List the Amargosa River Population of the Mojave Fringe-toed Lizard as an Endangered or Threatened Distinct Population Segment.	Notice of 12-month petition finding, Not warranted.	76 FR 61321–61330
10/4/2011	Endangered Status for the Alabama Pearlshell, Round Ebonyshell, Southern Sandshell, Southern Kidneyshell, and Choctaw Bean, and Threatened Status for the Tapered Pigtoe, Narrow Pigtoe, and Fuzzy Pigtoe; with Critical Habitat.	Proposed Listing Endangered	76 FR 61482–61529
10/4/2011	90-Day Finding on a Petition To List 10 Subspecies of Great Basin Butterflies as Threatened or Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial and Not substantial.	76 FR 61532–61554

FY 2011 AND FY 2012 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
10/5/2011	90-Day Finding on a Petition to List 29 Mollusk Species as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Substantial and Not substantial.	76 FR 61826–61853
10/5/2011	12-Month Finding on a Petition to List the Cactus Ferruginous Pygmy-Owl as Threatened or Endangered with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	76 FR 61856–61894
10/5/2011	12-Month Finding on a Petition to List the Northern Leopard Frog in the Western United States as Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 61896–61931
10/6/2011	Endangered Status for the Ozark Hellbender Salamander.	Final Listing Endangered	76 FR 61956–61978
10/6/2011	Red-Crowned Parrot	Notice of 12-month petition finding, Warranted but precluded.	76 FR 62016–62034
10/6/2011	12-Month Finding on a Petition to List Texas Fatmucket, Golden Orb, Smooth Pimpleback, Texas Pimpleback, and Texas Fawnsfoot as Threatened or Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76FR 62166–62212
10/6/2011	12-Month Finding on a Petition to List the Mohave Ground Squirrel as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 62214–62258
10/6/2011	Partial 90-Day Finding on a Petition to List 404 Species in the Southeastern United States as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Not substantial.	76 FR 62260–62280
10/7/2011	12-Month Finding on a Petition to List the Black-footed Albatross as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 62504–62565
10/11/2011	12-Month Finding on a Petition to List *Amoreuxia gonzalezii, Astragalus hypoxylus,* and *Erigeron piscaticus* as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 62722–62740
10/11/2011	12-Month Finding on a Petition and Proposed Rule to List the Yellow-Billed Parrot.	Notice of 12-month petition finding, Warranted Propose Listing, threatened.	76 FR 62740–62754
10/11/2011	12-Month Finding on a Petition to List the Tehachapi Slender Salamander as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 62900–62926
10/11/2011	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Final Listing Endangered	76 FR 62928–62960
10/11/2011	12-Month Finding for a Petition to List the California Golden Trout as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 63094–63115
10/12/2011	12-Month Petition Finding, Proposed Listing of Coquí Llanero as Endangered, and Designation of Critical Habitat for Coquí Llanero.	Notice of 12-month petition finding, Warranted; Proposed Listing Endangered.	76 FR 63420–63442
10/12/2011	12-Month Finding on a Petition to List Northern Leatherside Chub as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 63444–63478
10/12/2011	12-Month Finding on a Petition to List Two South American Parrot Species.	Notice of 12-month petition finding, Not warranted.	76 FR 63480–63508
10/13/2011	12-Month Finding on a Petition to List a Distinct Population Segment of the Red Tree Vole as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 63720–63762
12/19/2011	90-Day Finding on a Petition To List the Western Glacier Stonefly as Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	76 FR 78601–78609
1/3/2012	90-Day Finding on a Petition to List Sierra Nevada Red Fox as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 45–52
1/5/2012	Listing Two Distinct Population Segments of Broad-Snouted Caiman as Endangered or Threatened and a Special Rule.	Proposed Reclassification	77 FR 666–697
1/12/2012	90-Day Finding on a Petition To List the Humboldt Marten as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 1900–1908
1/24/2012	90-Day Finding on a Petition to List the ‘I’iwi as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 3423–3432
2/1/2012	90-Day Finding on a Petition to List the San Bernardino Flying Squirrel as Endangered or Threatened With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	77 FR 4973–4980
2/14/2012	Determination of Endangered Status for the Rayed Bean and Snuffbox Mussels Throughout Their Ranges.	Final Listing Endangered	77 FR 8632–8665

Our expeditious progress also includes work on listing actions that we funded in previous fiscal years and in FY 2012 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. We are implementing a work plan that

establishes a framework and schedule for resolving by September 30, 2016, the status of all of the species that the Service had determined to be qualified as of the 2010 Candidate Notice of Review. The Service submitted such a work plan to the U.S. District Court for the District of Columbia in *In re Endangered Species Act Section 4 Deadline Litigation,* No. 10–377 (EGS), MDL Docket No. 2165 (D. D.C. May 10, 2011), and obtained the court's approval. The Service had already begun to implement that work plan last FY and many of these initial actions in our work plan include work on proposed rules for candidate species with an LPN of 2 or 3. As discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, when compared to preparing separate proposed rules for each of them in the future. Actions in the lower section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act.

ACTIONS FUNDED IN PREVIOUS FYS AND IN FY 2012 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
4 parrot species (military macaw, yellow-billed parrot, scarlet macaw).[5]	12-month petition finding.
Longfin smelt	12-month petition finding.
20 Maui-Nui candidate species[2] (17 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing.
Umtanum buckwheat (LPN = 2) and white bluffs bladderpod (LPN = 9).[4]	Proposed listing.
Grotto sculpin (LPN = 2)[4]	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN = 2) & Rabbitsfoot (LPN = 9)).[4]	Proposed listing.
Diamond darter (LPN = 2)[4]	Proposed listing.
Gunnison sage-grouse (LPN = 2)[4]	Proposed listing.
Coral Pink Sand Dunes Tiger Beetle (LPN = 2)[5]	Proposed listing.
Lesser prairie chicken (LPN = 2)	Proposed listing.
4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8)).[3]	Proposed listing.
West Texas aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2)).[3]	Proposed listing.
2 Texas plants (Texas golden gladecress (*Leavenworthia texana*) (LPN = 2), Neches River rose-mallow (*Hibiscus dasycalyx*) (LPN = 2)).[3]	Proposed listing.
4 AZ plants (Acuna cactus (*Echinomastus erectocentrus var. acunensis*) (LPN = 3), Fickeisen plains cactus (*Pediocactus peeblesianus fickeiseniae*) (LPN = 3), Lemmon fleabane (*Erigeron lemmonii*) (LPN = 8), Gierisch mallow (*Sphaeralcea gierischii*) (LPN = 2)).[5]	Proposed listing.
FL bonneted bat (LPN = 2).[3]	Proposed listing.
3 Southern FL plants (Florida semaphore cactus (*Consolea corallicola*) (LPN = 2), shellmound applecactus (*Harrisia (= Cereus*) *aboriginum* (=*gracilis*)) (LPN = 2), Cape Sable thoroughwort (*Chromolaena frustrata*) (LPN = 2)).[5]	Proposed listing.
21 Big Island (HI) species[5] (includes 8 candidate species—6 plants & 2 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8)	Proposed listing.
12 Puget Sound prairie species (9 subspecies of pocket gopher (*Thomomys mazama* ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8)).[3]	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2)).[5]	Proposed listing.
Jemez Mountain salamander (LPN = 2)[5]	Proposed listing.
Actions with Statutory Deadlines	
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
6 Birds from Peru & Bolivia	Final listing determination.
Loggerhead sea turtle (assist National Marine Fisheries Service)[5]	Final listing determination.
Platte River caddisfly (from 206 species petition)[5]	12-month petition finding.
Ashy storm-petrel[5]	12-month petition finding.
Honduran emerald	12-month petition finding.
Eagle Lake trout[1]	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
Aztec gilia[5]	90-day petition finding.
White-tailed ptarmigan[5]	90-day petition finding.
Bicknell's thrush[5]	90-day petition finding.
Sonoran talussnail[5]	90-day petition finding.
2 AZ Sky Island plants (*Graptopetalum bartrami* & *Pectis imberbis*)[5]	90-day petition finding.
Desert massasauga	90-day petition finding.
Boreal toad (eastern or southern Rocky Mtn population)[5]	90-day petition finding.
Alexander Archipelago wolf[5]	90-day petition finding.
Eastern diamondback rattlesnake	90-day petition finding.

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds and FY 2011 funds.
[4] Funded with FY 2010 funds.
[5] Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The Bay-Delta DPS of longfin smelt will be added to the list of candidate species upon publication of this 12-month finding. We will continue to evaluate this DPS as new information becomes available. Continuing review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing determination for the Bay-Delta DPS of longfin smelt will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the San Francisco Bay-Delta Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the San Francisco Bay-Delta Fish and Wildlife Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 13, 2012.

Gary D. Frazer,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2012–7198 Filed 3–30–12; 8:45 am]

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Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 196 and 198

Pipeline Safety: Pipeline Damage Prevention Programs; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 196 and 198

[Docket No. PHMSA–2009–0192]

RIN 2137–AE43

Pipeline Safety: Pipeline Damage Prevention Programs

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) seeks to revise the Pipeline Safety Regulations to: Establish criteria and procedures for determining the adequacy of state pipeline excavation damage prevention law enforcement programs; establish an administrative process for making adequacy determinations; establish the Federal requirements PHMSA will enforce in states with inadequate excavation damage prevention law enforcement programs; and establish the adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised. Pursuant to the Pipeline Inspection, Protection, Enforcement, and Safety (PIPES) Act of 2006, establishment of review criteria for state excavation damage prevention law enforcement programs is a prerequisite should PHMSA find it necessary to conduct an enforcement proceeding against an excavator in the absence of an adequate enforcement program in the state where the violation occurs. The development of these criteria and the subsequent determination of the adequacy of state excavation damage prevention law enforcement programs is intended to encourage states to develop effective excavation damage prevention law enforcement programs to protect the public from the risk of pipeline ruptures caused by excavation damage, and allow for Federal administrative enforcement action in states with inadequate enforcement programs.

DATES: Persons interested in submitting written comments on this NPRM must do so by June 1, 2012.

ADDRESSES: Comments should reference Docket Number PHMSA–2009–0192 and may be submitted in the following ways:

- *Web Site:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations Facility (M–30), U.S. Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Docket Operations Facility, U.S. Department of Transportation, West Building, 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.

Instructions: Identify the docket number, PHMSA–2009–0192, at the beginning of your comments. If you mail your comments, we request that you send two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard.

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: Sam Hall, Program Manager, PHMSA by email at *sam.hall@dot.gov* or by telephone at (804) 556–4678 or Larry White, Attorney Advisor, PHMSA by email at *lawrence.white@dot.gov* or by telephone at (202) 366–9093.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This NPRM proposes to amend the Federal Pipeline Safety Regulations to: (1) Establish criteria and procedures PHMSA will use to determine the adequacy of state pipeline excavation damage prevention law enforcement programs. Such determination is a prerequisite should PHMSA find it necessary to conduct an administrative enforcement proceeding against an excavator for violation of the Federal requirements proposed in this NPRM in the absence of adequate state enforcement of state excavation damage prevention laws; (2) establish an administrative process for states to contest notices of inadequacy from PHMSA should they elect to do so; (3) establish the Federal requirements PHMSA will enforce in states with inadequate excavation damage prevention law enforcement programs; and (4) establish the adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised. In the absence of regulations specifying the criteria that PHMSA will use to evaluate a state's excavation damage prevention law enforcement program, PHMSA would take no enforcement action.

Executive Orders 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' The expected benefit of this rulemaking action is an increased deterrent to violations of one-call requirements (though requirements vary by state, a one-call system allows excavators to call one number in a given state in order to ascertain the presence of underground utilities) requirements and the attendant reduction in pipeline incidents and accidents caused by excavation damage. Based on incident reports submitted to PHMSA, failure to use an available one-call system is a known cause of pipeline accidents. PHMSA analyzed the costs and benefits of the proposed rule. To determine the benefits, PHMSA was able to obtain data for three states over the course of the establishment of their excavation damage prevention programs (additional information about these states can be found in the regulatory analysis that is in the public docket). Each of the three states had a decrease of at least 63 percent in the number of excavation damage incidents occurring after they initiated their enforcement programs. While many factors can contribute to the decrease in state excavation damage incidents, PHMSA found these states to be a helpful starting point on which to estimate the benefits of this rulemaking. PHMSA utilized three separate effectiveness rates to conservatively evaluate the benefits of this rulemaking. The rates are based on the reduction of incidents of the three states studied and more conservative effective rates because state pipeline programs vary widely, which may lead to a lower effective rate than the three states analyzed. In addition, we compared the overall costs of this rule to the average costs associated with a single excavation damage incident. PHMSA expects the total cost of this rule to be $1.2 million while the benefits are $23 million.[1]

This rulemaking has three separate potential cost impacts. The costs to excavators to comply with the Federal excavation standard, the cost to states to have their enforcement programs reviewed, to appeal a determination of ineffectiveness and to ask for reconsideration, and the cost impact on the Federal government to enforce the Federal excavation standard. With

[1] These numbers are discounted over 10 years at 7%.

regard to the potential cost impacts on excavators, PHMSA believes that excavators will not incur any additional costs because the Federal excavation standard, which is also a self-executing standard, mirrors the excavation standard in each state and does not impose any additional costs on excavators. The cost impacts on states are those costs associated with having their enforcement programs reviewed (estimated to be $20,000 per year), to appeal a determination of ineffectiveness (estimated to be a one time cost of $125,000) and to ask for reconsideration (estimated to be a one-time cost of $350,000). Therefore, the total estimated first year cost impacts on states are (($20,000 (annually) + (14 × $25,000) + (5 × $25,000)) = $495,000. The annual cost impacts on states in subsequent years are estimated to be $20,000. The annual cost impacts on the Federal government are estimated to be approximately $80,000. Therefore, the total first year cost of this rulemaking is estimated to be $547,688 ($470,000 + $77,688). The following years the costs are estimated to be approximately $100,000 per year. The total cost over ten years, with a 3% discount rate is $1,331,876 and at a 7% discount rate is $1,182,602. PHMSA is specifically asking for comments on whether it has adequately captured the scope and size of the costs of this rulemaking. The average annual benefits range from $10,939,602 to $3,445,975. Evaluating just the lower range of benefits over ten years results in a total benefit of over $29,000,000, with a 3% discount rate, and over $23,000,000, with a 7% discount rate. In addition, over the past 22 years, the average reportable incident caused $272,200 in property damage alone. Therefore, if this proposed regulatory action prevents just one average reportable incident per year, this rulemaking would be cost beneficial. Interested readers should refer to the Regulatory Evaluation that is posted in the docket for additional information.

II. Objective

Based on incident data PHMSA has received from pipeline operators, excavation damage is a leading cause of natural gas and hazardous liquid pipeline failure incidents.[2] Better, more effective enforcement of state excavation damage prevention laws is a key to reducing pipeline excavation damage incidents. Though all states have a damage prevention program, not all states adequately enforce their state damage prevention laws. Pursuant to the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 (PIPES Act), PHMSA is proposing criteria and procedures for determining whether a state's enforcement of its excavation damage prevention laws is adequate. As mandated by the PIPES Act, such determination is a prerequisite should PHMSA find it necessary to conduct an administrative enforcement proceeding against an excavator for violating Federal excavation standards. This NPRM also proposes to establish the administrative process for states to contest notices of inadequacy PHMSA issues, the Federal requirements PHMSA will enforce in states with inadequate enforcement programs, and the adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised.

III. Background

A. Pipeline Incidents Caused by Excavation Damage

Excavation damage is a leading cause of natural gas and hazardous liquid pipeline failure incidents. For the period from 1988 to 2010, 1,613 incidents, 185 fatalities, 697 injuries, and $438,785,552 in estimated property damages were reported as being caused by excavation damage on all PHMSA regulated pipeline systems in the United States, including onshore and offshore hazardous liquid, gas transmission, and gas distribution lines, except gathering lines.[3]

While excavation damage is the cause in a significant portion of all pipeline failure incidents, it is cited as the cause in a relatively higher portion of natural gas distribution incidents. To look at this issue, PHMSA initiated and sponsored in 2005 an investigation of the risks and threats to gas distribution systems. This investigation was conducted through the efforts of four joint work/study groups, each of which included representatives of the stakeholder public, the gas distribution pipeline industry, state pipeline safety representatives, and PHMSA. The areas of their investigations included excavation damage prevention. The Integrity Management for Gas Distribution, Report of Phase I Investigations (DIMP Report) was issued in December 2005.[4] As noted in the DIMP Report, the Excavation Damage Prevention work/study group reached four key conclusions.

- Excavation damage poses by far the single greatest threat to distribution system safety, reliability and integrity; therefore, excavation damage prevention presents the most significant opportunity for distribution pipeline safety improvements.
- States with comprehensive damage prevention programs that include effective enforcement have a substantially lower probability of excavation damage to pipeline facilities than states that do not. The lower probability of excavation damage translates to a substantially lower risk of serious incidents and consequences resulting from excavation damage to pipelines.
- A comprehensive damage prevention program requires nine important elements be present and functional for the program to be effective. All stakeholders must participate in the excavation damage prevention process. The elements are:

1. Enhanced communication between operators and excavators.
2. Fostering support and partnership of all stakeholders in all phases (enforcement, system improvement, etc.) of the program.
3. Operator's use of performance measures for persons performing locating of pipelines and pipeline construction.
4. Partnership in employee training.
5. Partnership in public education.
6. Enforcement agencies' role as partner and facilitator to help resolve issues.
7. Fair and consistent enforcement of the law.
8. Use of technology to improve all parts of the process.
9. Analysis of data to continually evaluate/improve program effectiveness.

- Federal legislation is needed to support the development and implementation of damage prevention programs that include effective enforcement as a part of the state's pipeline safety program. This is consistent with the objectives of the state pipeline safety programs, which are to ensure the safety of the public by addressing threats to the distribution

[2] Data from the U.S. Department of Transportation, PHMSA Office of Pipeline Safety, Incident and Accident Reports of Gas Distribution, Gas Transmission & Gathering and Hazardous Liquid Pipeline Systems. Pipeline incident and accident summaries are available on PHMSA Stakeholders Communication Web site at: *http://primis.phmsa.dot.gov/comm/Index.htm?nocache=3320.*

[3] Data from the U.S. Department of Transportation, PHMSA Office of Pipeline Safety, Incident and Accident Reports of Gas Distribution, Gas Transmission & Gathering and Hazardous Liquid Pipeline Systems. Pipeline incident and accident summaries are available on PHMSA Stakeholders Communication Web site at: *http://primis.phmsa.dot.gov/comm/Index.htm?nocache=3320.*

[4] This report is available in the rulemaking docket.

infrastructure. The legislation will not be effective unless it includes provisions for ongoing funding such as federal grants to support these efforts. This funding is intended to be in addition to, and independent of, existing federal funding of state pipeline safety programs.

Another recent report (Mechanical Damage Report) prepared on behalf of PHMSA [5] concluded that excavation damage continues to be a leading cause of serious pipeline failures and that better one-call enforcement is a key gap in damage prevention. In that regard, the Mechanical Damage Report noted that most jurisdictions have established laws to enforce one-call notification compliance; however, the report noted that many pipeline operators consider lack of enforcement to be degrading the effectiveness of one-call programs. The report cited that in Massachusetts, 3,000 violation notices were issued from 1986 to the mid-1990s, contributing to a decrease of third-party damage incidents on all types of facilities from 1,138 in 1986 to 421 in 1993. The report also cited findings from another study that enforcement of the one-call notification requirement was the most influential factor in reducing the probability of pipeline strikes and that the number of pipeline strikes is proportionate to the degree of enforcement.

With respect to the effectiveness of current regulations, the Mechanical Damage Report stated that an estimated two-thirds of pipeline excavation damage is caused by third parties and found that the problem is compounded if the pipeline damage is not promptly reported to the pipeline operator so that corrective action can be taken. It also noted ''when the oil pipeline industry developed the survey for its voluntary spill reporting system—known as the Pipeline Performance Tracking System (PPTS)—it recognized that damage to pipelines, including that resulting from excavation, digging, and other impacts, is also precipitated by operators (''first parties'') and their contractors (''second parties'')''.

Finally, the report found that for some pipeline excavation damage data that was evaluated, ''in more than 50 percent of the incidents, one-call associations were not contacted first'' and that ''failure to take responsible care, to respect the instructions of the pipeline personnel, and to wait the proper time accounted for another 50 percent of the incidents.''

[5] Mechanical Damage Final Report, Michael Baker Jr., Inc., April 2009.

B. State Damage Prevention Programs

There is considerable variability among the states in terms of physical geography, population density, underground infrastructure, excavation activity, and economic activity. For example, South Dakota is a rural, agricultural state with a relatively low population density. In contrast, New Jersey is more densely populated and is host to a greater variety of land uses, denser underground infrastructure, and different patterns of excavation activity. These differences between states equate to differences in the risk of excavation damage to underground infrastructure, including pipelines. Denser population often means denser underground infrastructure; more rural and agricultural states will have different underground infrastructure densities and excavation patterns than more urbanized states.

There is no single, comprehensive national damage prevention law. On the contrary, all 50 states in the United States have a law designed to prevent excavation damage to underground utilities. However, these state laws vary considerably and no two state laws are identical. Therefore, excavation damage prevention stakeholders in each state are subject to different legal and regulatory requirements. Variances in state laws include excavation notice requirements, damage reporting requirements, exemptions from the requirements of the laws for excavators and/or utility operators, provisions for enforcement of the laws, and many others. PHMSA has developed a reference for understanding the variability in these state laws at *http://primis.phmsa.dot.gov/comm/DamagePreventionSummary.htm*.

C. PHMSA Damage Prevention Efforts

PHMSA has made extensive efforts over many years to improve excavation damage prevention as it relates to pipeline safety. These efforts have included outreach, grants, and funding of cooperative agreements with a wide spectrum of excavation damage prevention stakeholders including:

- Public and community organizations.
- Excavators and property developers.
- Emergency responders.
- Local, state and Federal government agencies.
- Pipeline and other underground facility operators.
- Industry trade associations.
- Consensus standards organizations.
- Environmental organizations.

These initiatives are described in detail in the ANPRM on this subject that PHMSA published in the **Federal Register** on October 29, 2009 (74 FR 55797). The ANPRM can be viewed at *http://www.regulations.gov,* Docket ID PHMSA–2009–0192. These initiatives appear to have contributed to an overall decline in the rate of excavation damages to pipelines and other underground utilities, but PHMSA is unaware of any studies of the direct effect of these initiatives on the national excavation damage rate to pipelines. PHMSA invites comments regarding any studies that might have evaluated the effectiveness of these initiatives.

D. The Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006

On December 29, 2006, the PHMSA's pipeline safety program was reauthorized by enactment of the PIPES Act. The PIPES Act provides for enhanced safety and environmental protection in pipeline transportation, enhanced reliability in the transportation of the Nation's energy products by pipeline, and other purposes. Major portions of the PIPES Act were focused on damage prevention including additional resources and clear program guidelines as well as additional enforcement authorities to encourage states in developing effective excavation damage prevention programs. The PIPES Act identifies nine elements that effective damage prevention programs should include. These are, essentially, identical to those nine elements noted in the DIMP Report discussed in the previous subsection.

The PIPES Act also provided PHMSA with limited authority to conduct administrative civil enforcement proceedings against excavators who damage pipelines in a state that has failed to adequately enforce its excavation damage prevention laws. Specifically, Section 2 of the PIPES Act provides that the Secretary of Transportation may take civil enforcement action against excavators who:

1. Fail to use the one-call notification system in a state that has adopted a one-call notification system before engaging in demolition, excavation, tunneling, or construction activity to establish the location of underground facilities in the demolition, excavation, tunneling, or construction area;
2. Disregard location information or markings established by a pipeline facility operator while engaging in demolition, excavation, tunneling, or construction activity; and
3. Fail to report excavation damage to a pipeline facility to the owner or operator of the facility promptly, and report to other appropriate authorities

by calling the 911 emergency telephone number if the damage results in the escape of any flammable, toxic, or corrosive gas or liquid that may endanger life or cause serious bodily harm or damage to property.

The PIPES Act limited the Secretary's ability to take civil enforcement action against these excavators, unless the Secretary has determined that the state's enforcement of its damage prevention laws is inadequate to protect safety.

The following is the applicable citation from the PIPES Act:

SEC. 2. PIPELINE SAFETY AND DAMAGE PREVENTION.

(a) ONE CALL CIVIL ENFORCEMENT.—

(1) PROHIBITIONS.—Section 60114 is amended by adding at the end the following:

(d) PROHIBITION APPLICABLE TO EXCAVATORS.—A person who engages in demolition, excavation, tunneling, or construction—

(1) May not engage in a demolition, excavation, tunneling, or construction activity in a state that has adopted a one-call notification system without first using that system to establish the location of underground facilities in the demolition, excavation, tunneling, or construction area;

(2) May not engage in such demolition, excavation, tunneling, or construction activity in disregard of location information or markings established by a pipeline facility operator pursuant to subsection (b); and

(3) Who causes damage to a pipeline facility that may endanger life or cause serious bodily harm or damage to property—

(A) May not fail to promptly report the damage to the owner or operator of the facility; and

(B) If the damage results in the escape of any flammable, toxic, or corrosive gas or liquid, may not fail to promptly report to other appropriate authorities by calling the 911 emergency telephone number.

(e) PROHIBITION APPLICABLE TO UNDERGROUND PIPELINE FACILITY OWNERS AND OPERATORS.—Any owner or operator of a pipeline facility who fails to respond to a location request in order to prevent damage to the pipeline facility or who fails to take reasonable steps, in response to such a request, to ensure accurate marking of the location of the pipeline facility in order to prevent damage to the pipeline facility shall be subject to a civil action under section 60120 or assessment of a civil penalty under section 60122.

(f) LIMITATION.—The Secretary may not conduct an enforcement proceeding under subsection (d) for a violation within the boundaries of a state that has the authority to impose penalties described in section 60134(b)(7) against persons who violate that state's damage prevention laws, unless the Secretary has determined that the state's enforcement is inadequate to protect safety, consistent with this chapter, and until the Secretary issues, through a rulemaking proceeding, the procedures for determining inadequate state enforcement of penalties.

E. Advance Notice of Proposed Rulemaking

On October 29, 2009, PHMSA published an Advance Notice of Proposed Rulemaking (ANPRM) to seek feedback and comments regarding the development of criteria and procedures for determining whether states are adequately enforcing their excavation damage prevention laws, and for conducting Federal administrative enforcement, if necessary. The ANPRM also outlined PHMSA's excavation damage prevention initiatives and described the requirements of the PIPES Act, which authorizes PHMSA to conduct this rulemaking action. The ANPRM may be viewed at *http://www.regulations.gov* by searching for Docket ID PHMSA–2009–0192. Specifically, the ANPRM sought comments on the following subjects:

1. Criteria for determining the adequacy of state excavation damage prevention law enforcement programs;

2. The administrative procedures available to a state for contesting a notice of inadequacy should it receive one;

3. The Federal requirements for excavators that PHMSA would be enforcing in a state that PHMSA has determined to have an inadequate enforcement program;

4. The adjudication process that PHMSA would use if PHMSA cited an excavator for failure to comply with the Federal requirements for excavators PHMSA establishes through this rulemaking; and

5. The adequacy of PHMSA's existing requirements for pipeline operators to participate in one-call organizations, respond to dig tickets, and perform their locating and marking responsibilities.

A summary of comments and our response to those comments are provided later in the document.

F. Notice of Proposed Rulemaking

This NPRM proposes to respond to the Congressional mandate specified in Section 2 of the PIPES Act to:

1. Establish criteria and procedures PHMSA will use to determine the adequacy of state pipeline excavation damage prevention law enforcement programs. Such determination is a prerequisite should PHMSA find it necessary to conduct an administrative enforcement proceeding against an excavator for violation of the Federal requirements proposed in this NPRM in the absence of adequate state enforcement of state excavation damage prevention laws.

2. Establish an administrative process for states to contest notices of inadequacy from PHMSA should they elect to do so.

3. Establish the Federal requirements PHMSA will enforce in states with inadequate excavation damage prevention law enforcement programs.

4. Establish the adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised.

G. Summary of the Proposed Rulemaking

A. Standards for Effective State Damage Prevention Enforcement Programs

This NPRM proposes to establish the criteria by which PHMSA will evaluate state excavation damage prevention law enforcement programs for minimum adequacy to protect public safety. PHMSA is seeking comments on using the following criteria to evaluate the effectiveness of a state's damage prevention enforcement program:

1. Does the state have the authority to enforce its state excavation damage prevention law through civil penalties?

2. Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?

3. Is the state assessing civil penalties for violations at levels sufficient to ensure compliance and is the state making publicly available information that demonstrates the effectiveness of the state's enforcement program?

4. Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint-driven reporting, etc.) for learning about excavation damage to underground facilities?

5. Does the state employ excavation damage investigation practices that are adequate to determine the at-fault party when excavation damage to underground facilities occurs?

6. At a minimum, does the state's excavation damage prevention law require the following?

a. Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.

b. Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.

c. An excavator who causes damage to a pipeline facility:

i. Must report the damage to the owner or operator of the facility at the earliest practical moment following discovery of the damage; and,

ii. If the damage results in the escape of any flammable, toxic, or corrosive gas

or liquid that may endanger life or cause serious bodily harm or damage to property, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.

7. Does the state limit exemptions for excavators from its excavation damage prevention law? A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements. PHMSA will make the written justifications available to the public.

PHMSA may also consider individual enforcement actions taken by a state in evaluating the effectiveness of a state's damage prevention enforcement program. PHMSA requests comments on this issue.

PHMSA invites comments on the proposed criteria. In particular, are these criteria sufficient to assess the adequacy of state excavation damage prevention law enforcement programs? Do these criteria strike the right balance between establishing standards for minimum adequacy of state enforcement programs without being overly prescriptive?

B. Administrative Process for States

This NPRM proposes the administrative procedures that would be available to a state that elects to contest a notice of inadequacy. The proposed procedures involve a paper hearing where PHMSA finds the state's excavation damage prevention law enforcement inadequate and documents the basis for that finding (i.e., following its annual review of the state's pipeline safety program). Then, the state would have an opportunity to submit written materials and explanations. PHMSA would then make a final written determination including the reasons for the decision. PHMSA proposes to make publicly available all notices, findings and determinations. The proposed administrative procedures also provide for an opportunity for the state to petition for reconsideration of the decision. If the state's enforcement program is ultimately deemed inadequate, direct Federal administrative enforcement against an excavator who damaged a pipeline in that state could proceed. The procedures also give a state the opportunity to demonstrate at a later time that it has improved its excavation damage prevention law enforcement program to an adequate level and upon such showing, request that PHMSA discontinue Federal administrative enforcement in that state. PHMSA will respond to such requests and perform an adequacy review in a timely manner and no later than the next annual review.

PHMSA invites further comments on these proposed administrative procedures. In particular, does this process strike the right balance between Congress' direction to undertake Federal administrative enforcement, where necessary, while providing a state with a fair and efficient means of showing that the state's enforcement program is adequate? PHMSA is proposing to evaluate state excavation damage prevention law enforcement programs consistent with the criteria proposed in Section 198.55 below. For states that have been deemed to have inadequate enforcement programs in their most recent annual reviews and in accordance with the established process, PHMSA could conduct Federal administrative enforcement against excavators without further state process. A state with an inadequate program will have five years from the date of the finding to make program improvements that meet PHMSA's criteria for minimum adequacy. A state that fails to establish an adequate enforcement program in accordance with 49 CFR 198.55 within five years of the finding of inadequacy may be subject to reduced grant funding established under 49 U.S.C. 60107. The amount of the reduction will be determined using the same process PHMSA currently uses to distribute the grant funding; PHMSA will factor the findings from the annual review of the excavation damage prevention enforcement program into the 49 U.S.C. 60107 grant funding distribution to state pipeline safety programs. The amount of the reduction in 49 U.S.C. 60107 grant funding shall not exceed 10% of prior year funding. If a state fails to implement an adequate enforcement program within five years of a finding of inadequacy, the Governor of that state may petition the Administrator of PHMSA, in writing, for a temporary waiver of the penalty, provided the petition includes a clear plan of action and timeline for achieving program adequacy.

Even though the proposed rule does not require states to take any actions, the states have several incentives for enforcing their own excavation damage prevention laws. First, states with effective enforcement programs have lower rates of excavation damages to underground utilities, including pipelines. Lower damage rates translate to increased public and worker safety and decreased repair and outage costs for pipeline operators.

This proposed rule provides several additional incentives for states to enforce their own excavation damage prevention laws. First, in the comments to the ANPRM on this subject, stakeholders expressed their desire for states to maintain control over their own excavation damage prevention programs, including the enforcement of damage prevention laws. Stakeholders agree that damage prevention is a local and state issue and would prefer to avoid Federal involvement in enforcement. Second, this NPRM proposes to reduce PHMSA base grant funding for state pipeline safety programs if states do not implement effective enforcement programs within five years of findings of inadequacy (see proposed section 198.53). The potential reduction in grant funding will provide incentive to the state to address enforcement gaps in the excavation damage prevention laws and programs. PHMSA specifically requests comments on the adequacy of these incentives and the need for additional incentives for states to enforce their own excavation damage prevention laws.

Currently, states are reevaluating their pipeline safety laws. Several states, including Washington and Maryland, made significant changes to their damage prevention laws subsequent to the ANPRM on this subject. In addition, the following states are in various stages of legislative efforts to incorporate effective enforcement into their laws (these efforts range from stakeholder meetings, to building support for drafting legislation, to actually having a bill before the state legislatures): California, Ohio, Michigan, Alabama, Mississippi, Montana, Florida, Kentucky, and Delaware.

C. Federal Excavation Standard

This NPRM proposes to add a new Part 196 to Title 49, Code of Federal Regulations that prescribes standards for excavators to follow in conducting excavation activities in areas where underground gas or hazardous liquid pipelines may be located and the administrative enforcement process to address violations of the standards. The Federal requirements PHMSA is proposing to be contained in this Part are the standards that PHMSA would enforce against excavators in states determined to have inadequate damage prevention law enforcement programs pursuant to the procedures proposed in this rulemaking. The standard that PHMSA is proposing are effectively equivalent to the standard in 49 U.S.C. 60114(d) which states:

(d) Prohibition applicable to excavators.—A person who engages in demolition, excavation, tunneling, or construction—

(1) May not engage in a demolition, excavation, tunneling, or construction

activity in a state that has adopted a one-call notification system without first using that system to establish the location of underground facilities in the demolition, excavation, tunneling, or construction area;

(2) May not engage in such demolition, excavation, tunneling, or construction activity in disregard of location information or markings established by a pipeline facility operator pursuant to subsection (b); and

(3) Who causes damage to a pipeline facility that may endanger life or cause serious bodily harm or damage to property—

(A) May not fail to promptly report the damage to the owner or operator of the facility; and

(B) If the damage results in the escape of any flammable, toxic, or corrosive gas or liquid, may not fail to promptly report to other appropriate authorities by calling the 911 emergency telephone number.

The NPRM proposes to add new excavation standards that include requirements to use an available one-call system before digging, to excavate with proper regard for location information or markings established by a pipeline operator, to promptly report any damage to the pipeline operator, and to report any emergency release of hazardous products to appropriate authorities by calling 911 immediately. PHMSA is seeking comment in this NPRM on whether or not it should establish an upper limit on the time frame to report any damage to pipeline operators, such as two hours following discovery.

D. Adjudication Process for Excavators

PHMSA is proposing to use the same adjudication process established for pipeline safety violations set forth in 49 CFR Part 190. Under this process, excavators would have the same right as pipeline operators to: Receive written notice of the allegations including a description of the factual evidence the allegations are based on, file a written response to the allegations, request a hearing, be represented by counsel if the excavator so chooses, examine the evidence, submit relevant information and call witnesses on the excavator's behalf, and otherwise contest the allegations of violation. PHMSA proposes that hearings would be held as they are now for pipeline operators at one of PHMSA's regional offices or via teleconference. An excavator would also have the same opportunity as pipeline operators to petition for reconsideration of the agency's administrative decision. Judicial review of the final agency action would be available to the same extent it is available to a pipeline operator.

PHMSA invites further comments on the adjudication process for excavators. In particular, is the process too formal in the sense that excavators contesting a citation would have to prepare a written response for the record and potentially appear before an administrative hearing officer? Is the process not formal enough in the sense that it does not provide for formal rules of evidence, transcriptions, or discovery? Or does this process strike the right balance by being informal enough to be efficient and at the same time providing enough formality that excavators feel the process is fair and their ''due process are maintained''?

E. State Base Grant

PHMSA already conducts annual program evaluations and certification reviews of state pipeline safety programs. PHMSA would also conduct annual reviews of state excavation damage prevention law enforcement programs. A state that fails to establish an adequate enforcement program in accordance with 49 CFR 198.55 within five years of the finding of inadequacy may be subject to reduced grant funding established under 49 U.S.C. 60107. PHMSA would factor the findings from the annual review of the excavation damage prevention enforcement program into the 49 U.S.C. 60107 grant funding distribution to state pipeline safety programs. The amount of the reduction in 49 U.S.C. 60107 grant funding would not exceed 10 percent of prior year funding. If a state fails to implement an adequate enforcement program within five years of a finding of inadequacy, the Governor of that state may petition the Administrator of PHMSA, in writing, for a temporary waiver of the penalty, provided the petition includes a clear plan of action and timeline for achieving program adequacy. PHMSA would use the proposed 49 CFR 198.55 criteria to evaluate the effectiveness of a state's excavation damage prevention enforcement program.

IV. Analysis of Public Comments on the ANPRM

PHMSA received comments from 39 organizations and 152 individuals, including:

- Associations representing pipeline operators (trade associations)
  - The American Gas Association (AGA)
  - The American Petroleum Institute (API)
  - The American Public Gas Association (APGA)
  - The Association of Oil Pipelines (AOPL)
  - The Interstate Natural Gas Association of America (INGAA)
  - The Texas Pipeline Association (TPA)
  - The Texas Pipeline Safety Coalition (TPSC)
  - The Texas Oil and Gas Association (TxOGA)
- Transmission and distribution pipeline companies
  - Atlanta Gas Light Resources (AGL)
  - Baltimore Gas and Electric Company (BGE)
  - CenterPoint Energy
  - El Paso Pipeline Group (EPPG)
  - LDH Energy Pipeline, L.P.
  - Marathon Pipeline
  - Michigan Consolidated Gas Company
  - MidAmerican Energy Company
  - Nicor Gas
  - Northern Natural Gas Company
  - Paiute Pipeline
  - Panhandle Energy
  - San Diego Gas & Electric
  - Southern California Gas Company
  - Spectra Energy Transmission
- The National Association of Pipeline Safety Representatives (NAPSR)
- Individual state pipeline regulatory authorities
  - The Florida Public Service Commission
  - The Minnesota Office of Pipeline Safety
  - The Missouri Public Service Commission (PSC)
  - The Public Utilities Commission of Ohio (PUCO)
  - The Tennessee Regulatory Authority (TRA) excavator contractor associations
  - The Associated General Contractors of America (AGC)
  - The Associated General Contractors of Texas (AGC of Texas)
  - The National Utility Contractor Association (NUCA)
  - The Wisconsin Underground Contractors Association (WUCA)
- One-call organizations
  - Joint Utility Locating Information for Excavators, Inc. (JULIE)
  - GulfSafe
- A utilities locating service
  - The United States Infrastructure Corporation (USIC)
- A local/regional damage prevention council
  - The Greater Chicago Damage Prevention Council
- A citizens' interest group
  - The Pipeline Safety Trust (PST)
- The Association of American Railroads
- An excavation equipment manufacturer
- 154 individuals, 145 of whom submitted substantially similar to comments submitted by excavation contractors.

To a substantial extent, the comments supported the need for this rulemaking. When a pipeline is struck during an excavation project, not only is the public put at risk and energy supplies potentially disrupted, but the excavator personnel are also at risk of serious injury or even death. In the ANPRM, PHMSA posed some specific questions related to state excavation damage prevention programs. Many comments received were general to the entire ANPRM and others addressed specific sections and content of the ANPRM. The general comments and comments related to specific sections of the ANPRM are addressed individually below.

Many commenters addressed the concept of the questions, as was intended. Others addressed the questions as they were deemed to apply currently to specific state damage prevention (SDP) programs. Additionally, many comments received are outside the scope of the proposed regulatory changes. Many of the comments were to the effect that PHMSA enforcement should be applied to all underground utilities. For example, NAPSR, the Missouri Public Service Commission, AGA, and several pipeline operators commented that any rulemaking language should clearly specify the scope to which it applies and that if PHMSA seeks to expand its enforcement authority outside of pipeline matters, its legal authority to do so should be explained. While commenters believe that many states will benefit from broadening their damage prevention programs beyond pipelines to include other underground utilities, PHMSA's authority does not extend beyond pipeline facilities and, as defined in the PIPES Act, excavators under certain specified conditions.

Federal pipeline safety regulations require gas and hazardous liquid pipeline operators to have excavation damage prevention programs in place to protect their pipelines. These regulations require pipeline operators to participate in state one-call systems and enable PHMSA enforcement against regulated pipeline operators who fail to comply with applicable locating and marking requirements, including situations where their pipelines are damaged by improper excavation activities of the pipeline operator or its contractors (either excavating or locating contractors).

General Comments

Involve All Stakeholders in This Rulemaking Process

A number of comments supported PHMSA's approach of involving all stakeholders in this rulemaking process. Several commenters, including NAPSR, Missouri Public Service Commission, INGAA, and EPPG commented that beyond reviewing the written comments, PHMSA should conduct public meetings on this topic, and should lead open and on-going discussions of the issues as they arise, through the most appropriate venues. They noted that public meetings would allow all stakeholder groups to present their viewpoints and hear similar presentations from others, thus providing an effective means of gathering additional information that would assist PHMSA in developing standards for auditing the adequacy of states' excavation damage prevention enforcement programs and in issuing an effective and practicable rulemaking. NAPSR especially wants to be involved in the rulemaking process.

Response

PHMSA recognizes the value of open and ongoing discussions related to this rulemaking, and, therefore, took the optional step of publishing an ANPRM in October 2009 to provide information to and solicit feedback from stakeholders. PHMSA also conducted a meeting with NAPSR to discuss NAPSR's position and concerns on the issues identified in the ANPRM. The minutes from the meeting are available on the ANPRM docket (*http://www.regulations.gov,* Docket ID PHMSA–2009–0192). PHMSA does not intend to hold public meetings related to this rulemaking after the NPRM is published. As an alternative, PHMSA will post a recorded presentation pertaining to the NPRM on the PHMSA Web site. The recorded presentation will provide an overview of the proposed rule and encourage viewers to read and comment on the NPRM.

Federal Administrative Enforcement

USIC Locating Services, API, AOPL, INGAA, and several pipeline operators commented that PHMSA should develop the necessary processes and procedures and should not hesitate to use the Federal administrative enforcement authority granted by Congress to enforce excavation damage prevention laws where state enforcement programs are determined to be inadequate. They consider it to be in the public's best interest and that a key element of an effective excavation damage prevention program is enforcement action against excavators that do not follow the one-call laws, and that without enforcement, there is little incentive for excavators to comply with one-call laws. However, AGC, API and AOPL commented that Federal administrative enforcement should not be permanent. It should only last as long as necessary to ensure the state achieves a successful enforcement program. They noted that PHMSA should reserve enforcement to only those specific circumstances permitted by law when a state fails to meet the test for adequate enforcement of its excavation damage prevention laws. They contended that where strong and effective state excavation damage prevention laws and enforcement programs exist, PHMSA need not and should not exert its Federal authority lest a costly, potentially inefficient layer of Federal oversight result.

Conversely, WUCA commented that all enforcement of state excavation damage prevention laws should be at a state or local level and that the Federal Government should not be involved at all in enforcement. WUCA commented that excavators who damage underground facilities already pay for ''at fault'' damages and can be removed from bid lists for specific utilities. They consider free enterprise to the best ''enforcement'' available and want no Federal Government involvement, and prefer, at most, state enforcement.

JULIE, commented that it would seem contradictory that a particular state's excavation damage prevention enforcement program could be ''taken over'' by an agency (i.e., PHMSA) whose jurisdiction is limited solely to pipelines. JULIE suggested that PHMSA limit itself to providing assistance to state excavation damage prevention systems to help them improve enforcement of state excavation damage prevention laws.

Response

Congress provided that PHMSA undertake this rulemaking action in Section 2 of the PIPES Act. The PIPES Act requires that PHMSA must determine that a state's excavation damage prevention law enforcement program is inadequate before PHMSA may take enforcement action for a violation by an excavator occurring in that state. Thus, PHMSA cannot take enforcement actions against excavators in states determined by PHMSA to have adequate enforcement programs. PHMSA's goal is to encourage states to implement adequate enforcement programs. Federal administrative enforcement is not intended to be the

primary means of pipeline damage prevention enforcement and is instead intended to provide incentives for states to develop and implement adequate programs and serve as a backstop in states with inadequate programs.

State Program Evaluation Should Include an Appeals Process

Several commenters noted that the process for determining whether a state's enforcement of its excavation damage prevention law is ''inadequate'' should contain an appeals process and timeframe by which PHMSA needs to respond to appeals. Northern Natural Gas commented that the rulemaking should provide for an arbitration element when there is a dispute over a state's enforcement program, and that the state should be allowed an opportunity to improve its excavation damage prevention program if PHMSA determines that the program does not meet the minimum Federal requirements.

Response

This NPRM proposes the administrative process by which a state may contest a notice of inadequacy from PHMSA. Additionally, states deemed to have inadequate excavation damage prevention law enforcement programs will have the opportunity to enhance their programs and to demonstrate their adequacy through periodic reviews. Programs PHMSA previously determined to be inadequate may later be found adequate if a state takes steps to implement an effective enforcement program (see proposed Subpart D of Part 198).

Minimum Damage Prevention Program Requirements

API, INGAA, several pipeline operators, and three Texas pipeline associations commented that PHMSA should establish clear, well-defined, and consistent minimum criteria for determining the adequacy of acceptable state excavation damage prevention laws and programs. API, AOPL and Nicor commented that the fundamental minimum requirements that should apply in evaluating state programs are that all excavators, including state agencies and municipalities: (1) Use state one-call systems prior to excavation, (2) follow location information or markings established by pipeline operators, (3) report all excavation damage to pipeline operators, and (4) immediately notify emergency responders by calling 911 when excavation damage results in a release of pipeline products.

AGA and several pipeline operators commented that PHMSA should keep the overall review process and the criteria for determining the adequacy of state programs as simple as possible. They noted that PHMSA's evaluation of the adequacy of states' excavation damage prevention programs should be based upon a relatively short list of elements. They also noted that PHMSA will likely discover that few states have an excavation damage prevention program that would clearly meet all or even most of the criteria listed in the ANPRM.

Response

PHMSA agrees that the criteria for evaluating the adequacy of state excavation damage prevention law enforcement programs should be clear, well-defined, consistent, and as simple as possible. These criteria helped guide development of the criteria proposed in this NPRM. PHMSA seeks comments on these criteria.

PHMSA Should Encourage States To Implement and Enforce Effective Damage Prevention Laws

Many commenters, including the AGC, API, AOPL, INGAA, state regulatory agencies and many individual pipeline operators, agree with PHMSA's goal of encouraging states to implement, maintain and enforce effective excavation damage prevention laws. They encouraged PHMSA to move forward promptly to issue a final rule to accomplish the objective set forth in the ANPRM of promoting better, more effective enforcement of state excavation damage prevention laws. The NUCA and several pipeline trade associations recognized that PHMSA's jurisdiction is limited to gas and hazardous liquid pipelines. They commented, however, that this regulation's influence on how state authorities adjust their programs and enforcement practices to protect all underground facilities will be significant, and that addressing enforcement in a balanced and comprehensive manner in the proposed rule will facilitate the entire process.

Three Texas pipeline associations suggested that standards consistent with key aspects of the Common Ground Alliance Best Practices should be adopted by states to ensure the scope of their enforcement programs are adequate. They noted those key provisions include tolerance zone, positive response, due care in excavating, and reporting damages.

Response

As noted, PHMSA supports effective state excavation damage prevention law enforcement to protect pipelines. PHMSA strongly believes that individual states should retain the primary responsibility to enforce their excavation damage prevention laws effectively. The proposed regulations do not conflict with the best practices established by the Common Ground Alliance.

Apply Enforcement to All Excavators—No Exemptions

Several respondents, including NUCA and EPPG, commented that state excavation damage prevention laws and enforcement processes should apply to pipeline operator ''in-house'' and contractor excavators. They noted that ''first-party'' (facility operators) and ''second-party'' (operator contractor) damages, although often unreported, carry the same consequences as pipeline damages caused by landscapers, home owners, and other ''third-party'' excavators.

AGA and several pipeline operators noted that the term ''excavator'' is used throughout the ANPRM but that it was not clear what constitutes an excavator or excavation, thus clarification is needed.

NUCA, API, AOPL, and several pipeline operators commented that the scope of enforcement for all programs, Federal and state, should encompass all excavators, including state agencies, municipalities, counties, parishes, agricultural entities, and railroads. They believe that state law should require all excavators to call the one-call center and request facilities to be located and marked before digging, and that the exclusion of a category of excavator should be considered a basis for PHMSA regulation and direct enforcement.

Response

PHMSA agrees that state excavation damage prevention laws and enforcement should apply to all excavators, including pipeline operators and their contract excavators and locators. Current Federal pipeline safety regulations at 49 CFR 192.614 and 195.442, require gas and hazardous liquid pipeline operators, respectively, to comply with specific excavation damage prevention requirements. PHMSA and its state partners have authority to enforce these regulations against pipeline operators and can pursue enforcement action against pipeline operators when an operator's employees or its contractors, including

excavators and locators, violate the regulations.

PHMSA also agrees that, in general, exemptions of categories of excavators from state excavation damage prevention laws can be problematic because exempt excavators can damage underground utilities. However, some exemptions may be justifiable in some states, especially where substantiated by data (e.g., Virginia's exemptions for VDOT). States are ultimately responsible for establishing their own excavation damage prevention laws.

Under this proposed rule, only homeowners using hand tools, as opposed to than mechanized excavating equipment, on their own property are exempt from Federal administrative enforcement action. All other excavators would be subject to Federal enforcement in a state PHMSA deems to have an inadequate enforcement program, regardless of an excavator's exemption status under that state's law.

Fines and Penalties

Many commenters acknowledged that the use and application of civil penalties is necessary as an effective tool to deter violations of state excavation damage prevention laws that could lead to pipeline damage. Comments also indicated that civil penalties should be applied at an appropriate level to achieve such deterrence, including the escalation of fines and penalties for repeat offenders. Northern Natural Gas and others agreed that a responsible state agency should have the ability to levy fines and civil penalties similar to the Federal maximums. However, several commenters, including PUCO, noted that PHMSA could clarify the maximum civil penalties PHMSA will require for a state program to be determined ''adequate.'' Additionally, some commented that education and training should be considered in lieu of fines and penalties for minor violations.

Response

PHMSA is not proposing a specific penalty amount or schedule as a criterion in determining the adequacy of state excavation damage prevention law enforcement programs. However, state penalty levels should be sufficient to deter violations. PHMSA will review state enforcement records on a state-by-state basis.

Clarification of Terminology and Parties Subject to PHMSA Enforcement Action

Several comments asked for clarification of some terminology used in the ANPRM or, in some cases, clarification of the scope of the rulemaking. For example, WUCA asked for clarification of where enforcement would start—with gas mains or service lines or both. PUCO and some gas pipeline operators asked that the term ''incident'' be clarified. Is it as defined in 49 CFR § 191.3? Does it mean only incidents reportable under the applicable Federal or state law? Or, does it mean every event wherein damage occurs, regardless of the magnitude or consequences? PUCO also commented that the definition and implications of a state program designation of ''nominally adequate'' need to be clarified.

NAPSR asked what ''available'' means, regarding the question in the ANPRM ''Are records of investigations and enforcement available to PHMSA?'' Additionally, NAPSR asked for clarification on the terms ''reasonable care'' and ''timely.'' Other terms noted for clarification include: all excavation damage, damage, incident, excavation, and excavator.

Response

This rulemaking applies to all excavators and excavation activities that affect any gas or hazardous liquid pipelines subject to the pipeline safety laws in 49 U.S.C. 60101 *et seq.,* including gathering, transmission, and distribution pipelines (including gas mains and service lines). Those terms are defined in existing laws and regulations. PHMSA will retain the discretion to determine if enforcement action is necessary on a case-by-case basis. In response to commenters' concerns, PHMSA has taken care to clearly define terms in this regulation.

Complaint-Based Enforcement Process

Centerpoint Energy suggested a ''complaint-based'' process in which a pipeline operator or an excavator can file a complaint to petition for enforcement actions by the state, or to petition PHMSA to review the adequacy of the state's enforcement process. Centerpoint expressed the view that PHMSA should only initiate enforcement actions upon receipt of filed complaints and that one allegation in each complaint would have to be that the state's enforcement process is not adequate to prevent repeated violations. Centerpoint would prefer that the state could intervene as an interested party and dispute the claim and PHMSA would have to conduct a hearing and require specific findings concerning what aspects of the state's enforcement efforts were inadequate. Centerpoint considers that findings of inadequacy would relieve the complaining parties from the duty to resolve disputes at the state level until the state resolved those issues of inadequacy. Centerpoint commented that costs for PHMSA could be assessed to the losing party or split between the two.

Centerpoint commented that a complaint-based process would allow the operator, excavator, the state agency and PHMSA to direct time and resources where they are most needed. Centerpoint believes that a pipeline operator is in the best position to determine when an excavator is willfully ignoring the excavation damage prevention program and will likely continue to do so in spite of any actions the operator takes. They also consider that an operator can collect evidence to show it was unable to change excavator behavior and that punitive enforcement is needed, and to show that Federal administrative enforcement is necessary because a state's enforcement efforts were not adequate to affect the behavior of the excavators. Similarly, Centerpoint comments that excavators should be able to file complaints against operators that will not respond to locate requests or that consistently do a poor job of locating their facilities.

Response

PHMSA proposes to use the criteria and procedures proposed in this NPRM to assess the adequacy of state excavation damage prevention law enforcement programs. Once those evaluations are complete, PHMSA will determine, on a state-by-state basis, if Federal administrative enforcement action is necessary in states deemed by PHMSA to have inadequate enforcement programs. Under § 198.55, PHMSA would evaluate the state enforcement program in its entirety, but may also consider individual enforcement actions taken by a state where warranted. PHMSA may become aware of a potential need for Federal administrative enforcement through a variety of mechanisms, including notifications of reportable incidents, instances of a serious and recurring nature where excavators fail to comply with the Federal requirements proposed in this NPRM, or by other means, including complaints. PHMSA requests comments on ways or mechanisms that it can utilize to become aware of these incidents. PHMSA believes it is important to retain flexibility in the process used to make decisions concerning the use of Federal administrative enforcement authority. PHMSA will only conduct enforcement in states deemed to have inadequate enforcement programs in accordance with the criteria outlined in this NPRM.

Evaluate Enforcement Programs, Not Individual Enforcement Actions

INGAA and others commented that the standards and procedures for adequacy proceedings should be directed toward evaluating state enforcement *programs,* not specific enforcement *actions.* INGAA holds that applying adequacy standards and procedures to individual enforcement actions invites selective PHMSA involvement contrary to vesting primary enforcement responsibility with the states. Similarly, and consistent with using adequacy proceedings to examine programs instead of decisions, INGAA commented that PHMSA should specify that inadequacy findings are not retroactive—that a finding of inadequacy should not be used to revisit and alter a state's enforcement findings and sanctions.

Response

In determining a state program's adequacy, PHMSA would evaluate a state's overall damage prevention enforcement program, but may evaluate past specific state enforcement actions during the evaluation process. PHMSA did consider a system of addressing the adequacy of state enforcement programs on an incident-by-incident basis instead of through an annual review of the state enforcement programs. Under that scenario, upon determining that enforcement action in a given incident may deter future incidents, PHMSA would assess the state's ability to conduct effective enforcement in that particular incident and proceed with enforcement action if PHMSA found the state program inadequate. However, PHMSA believes that such a system would be inefficient and administratively burdensome and that an annual review may be more appropriate. PHMSA seeks comment on this issue.

Federal Funding

API, AOPL, TRA and WUCA commented that PHMSA should continue its assistance to state agencies seeking to develop and enforce effective excavation damage prevention programs through grants and other support mechanisms. They noted that this assistance should include providing quantitative analyses that demonstrate the effectiveness of existing excavation damage prevention programs and developing incentives to ensure that agencies and other stakeholders in the states cooperate in these efforts. TRA went on to comment that a state agency that is making a concerted effort to make changes to its excavation damage prevention law to meet the nine elements should not be punished by having its level of funding decreased.

PUCO was concerned that changes in how PHMSA evaluates state excavation damage prevention programs could result in a designation of a program being ''inadequate'' or ''nominally adequate,'' and that such a designation may affect funding and ultimately gas pipeline safety. PUCO commented that despite the stated assurance in the ANPRM that funding for the development and implementation of excavation damage prevention programs is ''intended to be in addition to, and independent of existing Federal funding of the state pipeline safety programs,'' the implications of designation of ''inadequate'' or ''nominally adequate'' on a state excavation damage prevention program's current funding is not addressed. PUCO commented that it would be beneficial for PHMSA to describe whether and how state funding for the gas pipeline safety program will be affected by a determination of ''inadequate'' or ''nominally adequate.''

The three Texas pipeline associations noted that PHMSA should evaluate the adequacy of state programs in a similar fashion to that of PHMSA's existing state program evaluation. They commented that a state's annual program performance evaluation could result in a reward of additional grant monies or a penalty of a reduction in grant moneys based on PHMSA's excavation damage prevention law enforcement program assessment, to a greater degree than is currently practiced.

Response

PHMSA intends to continue its support of states seeking to develop and enforce effective excavation damage prevention programs through grants and other means. PHMSA has undertaken a variety of both qualitative and quantitative initiatives that demonstrate the effectiveness of existing state excavation damage prevention programs. These initiatives are described in the ANPRM pertaining to this rulemaking (*http://www.regulations.gov,* Docket ID PHMSA–2009–0192). When evaluating a state's overall pipeline safety program, PHMSA will continue to consider the extent to which a state has implemented an effective excavation damage prevention enforcement program. The effect on base grant funding of a declaration that a state's excavation damage prevention enforcement program is inadequate is proposed in this NPRM.

State Authority for Interstate Pipeline Operators

Paiute Pipeline and three Texas pipeline associations submitted comments regarding how interstate pipeline operators are expected to be treated under a state's excavation damage prevention program and noted that PHMSA should provide clarification in this regard. The issue they noted is whether the operator is treated as an excavator or as an operator and whether state agencies have the authority to enforce state excavation damage prevention standards on interstate pipeline operators or on excavators working near interstate pipelines. They consider this to be especially the case for states that have not applied for, or been granted, interstate agent status for natural gas and/or hazardous liquid lines. Paiute commented that authority for inspection and enforcement of interstate pipelines pursuant to Federal regulations should remain with PHMSA, and that in states that don't have interstate pipeline inspection and enforcement authority, the state should treat an interstate pipeline as an excavator, not a pipeline operator.

The three Texas pipeline associations commented that there should be a process for states to clarify that they have the ability to enforce state excavation damage prevention standards with regard to interstate pipelines, through a statutory change or through a Memorandum of Understanding between PHMSA and the states when certain program standards are met. Spectra Energy commented that the existing enforcement process in 49 CFR Part 190 should continue to be applied to interstate pipeline operators.

Response

States that have an annual certification under 49 U.S.C. 60105 have authority to regulate the intrastate pipelines in that state covered by the certification. States that have an interstate agent agreement under 49 U.S.C. 60106 may conduct inspections and investigations on interstate pipelines, but must refer any alleged violations on interstate pipelines to PHMSA for enforcement action. While states are generally preempted from establishing or enforcing safety standards for interstate pipelines, 49 U.S.C. 60104 contains a specific provision that allows a state's pipeline damage prevention one-call program to apply to interstate pipelines as well as intrastate pipelines.

Accordingly, all excavators and pipeline operators in a certified state are

generally subject to the requirements of that state's excavation damage prevention laws (except when explicitly exempted by state law). The applicability of excavation damage prevention requirements within a state is determined by that state's law. Under the provisions included in this NPRM, state excavation damage prevention laws will continue to be enforced as specified by state laws except when PHMSA deems a state's enforcement program inadequate. In that case, PHMSA proposes to enforce the Federal requirements established by this rulemaking against excavators in that state who fail to comply with the Federal requirements. Regardless of the status of a state's damage prevention program, PHMSA is proposing to retain its existing enforcement authority over pipeline operators and will continue to enforce the requirements related to excavation damage prevention (49 CFR 192.614 and 195.442) for pipeline operators it regulates.

Model Programs

NAPSR, Missouri PSC, AGA and several pipeline operators noted that care should be exercised about urging states to adopt concepts of what a ''model'' excavation damage prevention program should be. They cautioned that PHMSA should be open-minded in its review of state programs, allow for alternate approaches for damage investigations, and not have preconceived ideas on what an effective state excavation damage prevention program should include. AGA and several operators noted that PHMSA should avoid taking a prescriptive approach on the overall review of the state's excavation damage prevention enforcement process. They suggested that PHMSA should adopt a holistic and data-driven approach to adequacy assessment. For a state with documented success at excavation damage prevention, compliance with specific PIPES Act criteria should be at most a basis for suggested improvement. They noted that a state program should never be deemed inadequate solely because it did not meet all of these criteria.

NAPSR noted that depending on how its proposed provisions are interpreted, a program such as the one apparently envisioned by PHMSA in the ANPRM could be burdensome and costly. NAPSR noted that PHMSA should not presume that states can or will readily change their laws in response to Federal initiatives, and should be mindful of unintended consequences that may arise upon re-opening the existing state law to further amendments. NAPSR stated that it is likely that if onerous provisions are adopted in the proposed rule, some states will simply defer to Federal administrative enforcement, in which case NAPSR expects PHMSA will undertake every action it would otherwise expect a state to perform.

API and AOPL commented that state excavation damage prevention program evaluations should be based primarily on the effectiveness of the overall programs in place and allow for flexibility in the statutory or regulatory language. They noted, for example, a state program may be considered adequate if it has met the fundamental requirements described in the introduction, but failed to meet other program elements required by PHMSA, as long as the state can demonstrate overall program effectiveness. They consider that an excavation damage prevention program that establishes a generally acceptable baseline should provide an objective measuring stick.

Panhandle Energy commented that a template or recommended practice for enforcement of excavation safety is required, so that both PHMSA and the states have a clear understanding of the requirements, before any program evaluation takes place.

Response

As noted, PHMSA's goal is to provide incentives to states to develop and implement effective excavation damage prevention and enforcement programs. PHMSA believes there are some fundamental components of effective state enforcement programs. For example, an adequate enforcement program requires, at a minimum, the existence of statutory enforcement authority that includes civil penalties for violations and the use of that authority. The criteria for evaluating state enforcement programs proposed in this NPRM address those fundamental components (see proposed section 198.55).

Evaluate the Entire State Program

NUCA commented that PHMSA should evaluate each state's excavation damage prevention program as a whole. Even if thorough enforcement exists in a particular state, if the program itself does not adequately address the nine elements of an effective excavation damage prevention program, the entire program itself may be inadequate. If a state's excavation damage prevention program and enforcement practices were to focus exclusively on excavator responsibilities, that program is not fully addressing excavation damage prevention. AGA, APGA, and several pipeline operators commented that for a state to have a documented excavation damage prevention program alone is not enough; it is critical for the state agency to have the resources and the incentive to exercise its authority, when necessary.

In this regard, NAPSR commented that an important factor to consider in assessing the overall adequacy of a state excavation damage prevention program would be the relative weight given to the various proposed individual assessment factors listed in the ANPRM. NAPSR noted, for example, that enforcement of excavation damage prevention laws has been shown to be an essential element of a successful excavation damage prevention program. The issuance of appropriate civil penalties has been a demonstrated deterrent to non-compliant behavior. When assessing the adequacy of excavation damage prevention programs, this factor could be given a heavier weight than, for example, exempting certain parties who perform less risky excavations. Similarly, APGA commented that some of the assessment factors should receive more weighting than others and that weighting should be discussed with the affected parties. APGA noted that the ANPRM is a good start in opening a dialogue with the affected public, industry and state governments.

With regard to weighting the assessment factors, AGA commented that the most important criteria are the ones involving timely reporting of pipeline damages, a universal requirement for all parties to notify the one-call center prior to excavation, establishment of a single agency responsible for oversight of excavation damage prevention laws, and an effective enforcement process. AGA noted that the list of criteria listed in the ANPRM appears thorough, but how the criteria are weighted and actually evaluated is open to several different approaches.

Michigan Consolidated Gas commented that consideration should be given to states that are working on revising their state laws.

Response

Effective excavation damage prevention law enforcement is critical to an effective excavation damage prevention program, but enforcement is just one component of an effective program. PHMSA has undertaken several efforts to document state excavation damage prevention programs in their entirety. Information regarding those efforts is available at *http://primis.phmsa.dot.gov/comm./*

damagepreventionsummary.htm. However, the PIPES Act states:

''(f) LIMITATION.—The Secretary may not conduct an enforcement proceeding under subsection (d) for a violation within the boundaries of a state that has the authority to impose penalties described in section 60134(b)(7) against persons who violate that state's damage prevention laws, unless the Secretary has determined that the state's enforcement is inadequate to protect safety, consistent with this chapter, and until the Secretary issues, through a rulemaking proceeding, the procedures for determining inadequate state enforcement of penalties.''

While evaluating state excavation damage prevention programs in their entirety is part of the annual review of a state's overall pipeline safety program performed by PHMSA in connection with the state grant process, this proposed rulemaking is focused solely on the enforcement component. In this NPRM, PHMSA has proposed the criteria for evaluating state excavation damage prevention law enforcement programs.

PHMSA does not propose to weight the criteria used in evaluating state excavation damage prevention law enforcement programs. Weighting the criteria could create an overly-prescriptive set of criteria. PHMSA believes the proposed criteria are simple enough to not warrant a specific scoring or weighting method. PHMSA specifically asks for comments on whether it should weight the criteria, how the critieria might be weighted, and the rationale for weighting the criteria in evaluating state excavation damage prevention law enforcement programs.

Evaluation of state enforcement programs will pertain to state laws and regulations in effect at the time of evaluation. PHMSA believes that states should have the opportunity to demonstrate improvements in their enforcement programs and petition PHMSA for reevaluation of their programs as necessary and appropriate.

Damage Reporting

Many commented that they do not support reporting all pipeline damages as this will create an unnecessary burden on the operator, the state, and PHMSA. Conversely, Northern Natural Gas commented that excavators should be required to report all pipeline damage to the affected pipeline operator.

Response

This proposed rulemaking does not address requirements for damage reporting by pipeline operators. However, the reporting of damages that provides enough detail for analysis and resource allocation is critical in developing effective excavation damage prevention programs because inadequate reporting will result in a failure to investigate incidents that should be investigated. Therefore, PHMSA encourages all states to develop effective excavation damage reporting requirements. The CGA Damage Information Reporting Tool (DIRT) is an effective means of collecting data on damages to pipelines and other underground facilities. This is a voluntary filing requirement that can assist in the collection of data on damages. The data is made available to the Federal government, states and the public by the CGA. As provided in the PIPES Act, this proposed rulemaking requires an excavator who causes damage to a pipeline facility to report the damage to the owner or operator of the facility promptly.

Perform Annual Reviews Only for State Enforcement Programs Deemed Inadequate

AGA and several pipeline operators commented that annual excavation damage prevention program reviews are not necessary for those states with adequate programs. They noted that it would be reasonable for PHMSA to establish a five-year review cycle for those states. Their basis is that a state's overall program will change minimally over the course of a year and that an annual audit of every program seems unnecessary. From the standpoint of administrative efficiency, it would be far better for PHMSA to lengthen its review cycle for programs found adequate after an initial audit, and focus its resources on the programs it found inadequate or adequate subject to specific corrective action. PHMSA should only perform annual reviews for states found to have a ''nominally adequate'' or inadequate program so that these states have the opportunity to have their status re-evaluated to identify areas for improvement and additional emphasis.

JULIE, Inc. commented that there appears to be no probationary period or other opportunity for states to improve upon PHMSA's recognized ''deficiencies'' prior to PHMSA undertaking enforcement actions.

Response

PHMSA agrees that resources and attention should be focused on state excavation damage prevention law enforcement programs that are deemed inadequate. However, PHMSA proposes that all SDP enforcement programs be evaluated concurrently with PHMSA's annual state pipeline safety program evaluations, or at the request of states as appropriate. PHMSA does not believe the addition of these evaluations will be overly cumbersome. PHMSA also proposes that states be given a five-year grace period after notification that their enforcement programs have been deemed inadequate to address deficiencies in their programs before state pipeline safety base grant funding levels are potentially affected. However, PHMSA proposes that Federal excavation damage prevention enforcement may take place at any time after a state's enforcement program is deemed inadequate. The process for evaluating state enforcement programs is described in this NPRM.

Comments on Section IV Issues on Which PHMSA Sought Comment

In Section IV of the ANPRM, pipeline operators, excavators, states and the public were urged to consider the appropriate procedures for determining the adequacy of state excavation damage prevention law enforcement programs, as well as the need for Federal administrative enforcement in the absence of an adequate state program. PHMSA posed specific questions to solicit stakeholder input. These included questions related to:

A. Criteria for Determining the Adequacy of SDP Enforcement Programs;

B. Administrative Process;

C. Federal Requirements for Excavators;

D. Adjudication Process; and

E. Existing Requirements Applicable to Owners and Operators of Pipeline Facilities.

Many of the comments received were repetitious of those noted above under General Comments.

A: Criteria for Determining the Adequacy of SDP Enforcement Programs

In Section IV.A of the ANPRM, PHMSA noted that ''a threshold criterion for determining the adequacy of a state's damage prevention enforcement program will be whether the state has established and exercised its authority to assess civil penalties for violations of its one-call laws. PHMSA will likely consider the following issues in further evaluating the enforcement component of [state damage prevention] programs.'' The ANPRM then listed 13 items for consideration and comment. Following are comments received relative to those items:

Item 1: ''Does state law contain requirements for operators to be members of and participate in the state's one-call system (similar to

current federal pipeline safety regulations, 49 CFR 192.614 and 49 CFR 195.442)?''

Several commented that Federal pipeline safety regulations adequately address this requirement for pipeline operators. Several commenters also said that each state excavation damage prevention program should require all underground facilities operators to be members of the state's one-call system(s).

NUCA commented that ''participation'' in excavation damage prevention includes calling the one-call center before excavating. However, NUCA also commented that underground facility operators being members of the appropriate one-call center is fundamental to the excavation damage prevention process and that exemptions only increase the likelihood of facility damages. NUCA cites the Common Ground Study of One-Call Systems and Damage Prevention Best Practices, for which ''the underlying premise for prevention of damage to underground facilities, and the foundation for this study, is that all underground facility owners/operators are members of one-call centers, and that it is always best to call before excavation.''

Michigan Consolidated Gas questioned how the state and/or PHMSA would take into account operators that do not have the resources, equipment, funding, etc., to locate their facilities.

Response

Sections 192.614 and 195.442 of the pipeline safety regulations require regulated pipeline operators to be members of qualified one-call systems in the states in which they operate. All states certified to regulate gas operators will have adopted § 192.614 allowing them to enforce it against the intrastate gas operators they regulate.

Items 2 and 3: ''Does state law require all excavators to use the state's one-call system and request that underground utilities in the area of the planned excavation be located and marked prior to digging? Has the state avoided giving exemptions to its one-call damage prevention laws to state agencies, municipalities, agricultural entities, railroads, and other groups of excavators?''

NAPSR commented that the standards to which PHMSA would hold a state in terms of ''excavation'' must be consistent with the terms used in that state's law. NAPSR noted that there may be very legitimate reasons for exemptions in a state one-call law. For example, agricultural exemptions may recognize the total impracticality of attempting to include normal farm tillage. Others may conclude that the risk of an activity is so low that regulation is not justified, such as opening a grave in a cemetery. Still others may be the result of carefully crafted legislative compromises to achieve passage of one-call legislation, the reopening of which could have negative consequences. NAPSR also noted that 49 U.S.C. 60114(d), which lists demolition, excavation, tunneling, or construction, or excavation as defined in paragraph 192.614(a), is far from all-inclusive, in that it seems to exclude farm tillage and gardening, and perhaps activities such as pipe or cable plowing. NAPSR considers that PHMSA must determine to what extent certain exemptions in individual states will be acceptable.

AGA, along with Nicor, Paiute Pipeline and Southwest Gas Corporation, agreed that exemptions are a critical consideration in evaluating the adequacy of state excavation damage prevention law enforcement programs. They noted that exemptions are inherently counter to the entire concept of excavation damage prevention being a shared responsibility. They noted that in several states, exemptions have been granted, for example, to state DOTs, counties, municipalities, railroads, and private land owners. The exemptions can take on different forms; some apply so that the entity does not need to belong to the one-call center for the purpose of marking its underground facilities, while others allow an entity to excavate freely without having to notify the one-call center, and still others allow certain parties to be free of enforcement penalties. The commenting organizations hold that exemptions often exist only because of private interests that enable certain entities to escape responsibility in the excavation damage prevention process.

They also commented that exemptions serve as an impediment when stakeholders attempt to craft new legislation for state excavation damage prevention laws. They referred to the DIMP Phase 1 Report (*http://primis.phmsa.dot.gov/dimp/docs/IntegrityManagementforGasDistributionPhase1Investigations2005.pdf*), in commenting that all stakeholders must participate in the excavation damage prevention process for it to be successful.

Spectra Energy commented that PHMSA's criteria should force states to eliminate all exemptions from their one-call requirements. Spectra noted that a number of states continue to exempt from the one-call requirements certain types of excavators, such as agriculture, railroads and state/county road commissions. Spectra considers that to provide exemptions is contrary to the goal of pipeline safety, noting that the pipeline operator is the most qualified entity to determine if a pipeline exists within the area of interest, to locate and mark the facility, and to determine the safety precautions necessary to ensure the pipeline is not impacted.

JULIE, Inc. expressed a concern that some states' cultures provide for the successful existence of more than one excavation damage prevention system (one-call center) that does not have overlapping geographic areas. There appears to be no process in the ANPRM to recognize separate evaluation results in those states, particularly when possibly one or both of the systems may have unique but strong enforcement programs in place.

Response

As noted in the response to the General Comments above, some exemptions may be justifiable in some states, especially where substantiated by data. If having absolutely no exemptions were a ''pass/fail'' criterion for evaluating state excavation damage prevention law enforcement programs, PHMSA believes that nearly every state (if not all states) would be declared inadequate.

PHMSA does not propose an absolute prohibition on exemptions from state one-call damage prevention requirements. States are ultimately responsible for establishing the excavation damage prevention laws that best suit their own circumstances. PHMSA policy strongly encourages states to limit exemptions, for both excavators and utility owners/operators, from excavation damage prevention laws to the extent practicable. To that end, one of the criteria for determining the adequacy of state excavation damage prevention law enforcement programs proposed in this NPRM is ''limited and justified'' exemptions for excavators from the requirements of state excavation damage prevention laws.

In assessing state excavation damage prevention law enforcement programs, PHMSA will assess all programs if the state under evaluation has multiple enforcement programs. In that case, PHMSA may declare one or more of the enforcement programs inadequate, thereby allowing PHMSA to conduct Federal administrative enforcement actions in geographic areas covered by the inadequate program.

Item 4: ''Are the state's requirements detailed and specific enough to allow

excavators to understand their responsibilities before and during excavating in the vicinity of a pipeline?''

Paiute Pipeline and Southwest Gas Corporation recommended that PHMSA extend this objective to include excavating in the vicinity of any underground facility and supported PHMSA's objective of states providing clarity to excavators to ensure that detailed and specific information is available so they understand their responsibilities before and during excavation within the vicinity of a pipeline. Similarly, AGL Resources commented that this item is an appropriate consideration when determining the adequacy of a state's excavation damage prevention program, and noted that ensuring that excavators understand expectations and consequences is an important aspect of promoting compliance.

NAPSR commented that addressing this criterion could be very subjective and that specific criteria would be needed for determining what is ''detailed and specific enough.'' They noted that some states may have extensive regulations, while others may have successful excavation damage prevention programs with limited regulatory intervention.

MidAmerican Energy Company commented that the detail and specificity of each state's law need not match the level of detail of the proposed Federal requirements. They noted that there is value in allowing states to tailor their statutory and regulatory requirements to the specific circumstances presented in that state. They further noted that the level of detail of responsibilities is best determined by each situation, condition and scheme and operator requirements for excavations on or near its underground facilities, given that underground pipelines are constructed and operated in varied geographic locations such as remote wilderness, prairie, active agricultural lands, forests, residential, commercial, industrial, and subsea environments.

AGA considers that state requirements for most professionals in the excavation industry adequately convey the responsibilities involved in proper excavation. However, it noted excavators are often non-professionals who do not understand safe digging practices or even the importance of notifying the one-call center. AGA noted that according to CGA's 2008 DIRT Report, occupants and farmers have been the excavator in 8 to 10 percent of the damage reports collected over the three-year period between 2006 and 2008.

Response

PHMSA encourages states to utilize plain language principles [6] when drafting their pipeline safety regulations. At the same time, though, PHMSA does not want to be overly subjective in establishing criteria for determining adequacy and PHMSA continues to believe that states can and should develop excavation damage prevention laws that best suit their particular needs. Therefore, PHMSA is not proposing to use the detail and specificity of state law as a criterion at this time. However, PHMSA believes that states should collect and manage data that is detailed enough to demonstrate that excavators clearly understand the requirements of state excavation damage prevention laws.

Item 5: ''Are excavators required to report all pipeline damage incidents to the affected pipeline operators?''

Many commenters considered this item to be essential in evaluating the adequacy of state excavation damage prevention law enforcement programs. The TRA commented that mandatory reporting of damages to pipeline facilities should be a part of any effective excavation damage prevention program. AGA views this as one of the most important issues for evaluation and cited it as being included in the PIPES Act. AGA noted that the failure of excavators to notify the pipeline operator of damage promptly has resulted in some significant pipeline ruptures involving fatalities, injuries, and property loss. AGA cited that past incidents have been a painful reminder that just nicking the pipe coating or cutting a cathodic protection wire can affect the long-term integrity of the pipe and lead to a leak or rupture. Nicor commented that despite the requirement, excavators have waited up to several hours before reporting damages, thereby exacerbating circumstances. Nicor also cited instances where excavators considered damage to be minor (coating knick or broken tracer wire) and backfilled an excavation prior to reporting it, requiring the operator to then re-expose the area of reported damage to make repairs. AGL Resources also commented that in addition to excavators reporting damages to the operator, all utility operators should be required to report damages to provide a more complete picture of damage and prevention needs. To whom operators should report was not addressed.

An additional comment received was that PHMSA should clarify how ''damage'' would be applied to the operator as an excavator, or operator's contract excavator and how this might be enforced.

NUCA commented that while excavators are subject to extensive damage reporting requirements in most state laws, the lack of state requirements to report ''near misses'' obstructs efforts to provide accurate data trends. NUCA considers that when underground facility operators fail to locate and mark their lines accurately, that data should be captured regardless of whether the facility was damaged. Even if reporting of ''near misses'' is required by state law, NUCA believes these requirements are rarely enforced.

Response

Reporting pipeline damages to affected pipeline operators is an essential component of pipeline safety. To that end, PHMSA believes that states must require that excavators report to pipeline operators all incidents that actually result in physical damage to pipelines as a criterion for evaluating a state's program. As noted above, states should also consider establishing criteria for operators in turn to report damage incidents to allow the state to determine whether an investigation and enforcement should be undertaken. Therefore, PHMSA is proposing, as part of the criteria for determining the adequacy of a state's program, that each state has a reliable means for learning about excavation damages to underground pipelines (see proposed section 198.55).

PHMSA agrees with the importance of damage reporting by all underground facility operators. However, PHMSA does not propose to use damage reporting by operators as a criterion for evaluating state enforcement programs. PHMSA has the authority to require pipeline operators to report damages, but does not have the authority to require other utility operators to report damages. PHMSA is concerned that this special requirement for pipeline operators would be confusing for utility operators and cumbersome for the states.

With regard to the comment about PHMSA's treatment of pipeline operators as excavators, PHMSA's existing regulations at 49 CFR 192.614 and 195.442 address these issues.

PHMSA is not proposing to require reporting pipeline excavation damage near-misses at this time. While data on

[6] Further information on plain language principles can be found in Federal guidance here: *http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-15.pdf.*

near-misses would be valuable in guiding state excavation damage prevention program improvements, this proposed rule pertains specifically to excavators who actually damage PHMSA regulated pipelines. In addition, this requirement could impose a significant cost on excavators. However, there is nothing stopping a state from adopting more stringent reporting requirements such as including near-misses. PHMSA seeks comments on the potential cost impacts of requiring reporting of pipeline excavation damage near-misses.

Item 6: ''Does state law contain a provision requiring that 911 be called if a pipeline damage incident causes a release of hazardous products?''

AGA and several gas pipeline operators commented that some states may adopt statutory language that does not exactly match the Federal legislation. For example, a state may adopt language that affords pipeline operators some latitude so that they do not need to dial 911 if they damage their own pipeline. Since operating personnel are already on the jobsite, AGA and the commenting companies agree that operators should not be required to dial 911 if they cause damage to their own pipeline that results in a release that the operators can safely control without the aid of emergency response personnel prior to making the necessary repair.

Paiute Pipeline and Southwest Gas Corporation also commented that this provision should apply only if the damage may endanger life or cause serious bodily harm or damage to property, and results in the escape of any flammable, toxic or corrosive gas, and that all releases of natural gas do not need to be reported by making a 911 phone call. They noted that PHMSA should distinguish between natural gas and other gases or liquids instead of trying to include all of these under the umbrella of ''hazardous products.''

NAPSR commented that with regard to calling 911, the question should be whether the excavator by law—or appropriate regulation—is required to notify local emergency responders and/or law enforcement if a release of product poses a danger to the public. NAPSR anticipates that where 911 is available the excavator would most likely use it to make that notice, but considers that it should not be necessary for state law to specify that method if the desired end is achieved. NAPSR noted that state laws may predate the advent of 911 emergency call systems, and therefore would not specify that 911 must be called. NAPSR also noted that calling 911 is generally promoted through state one-call centers and operators' public awareness programs, and the practice may best be achieved through best practices and not through Federal or state regulations.

Response

The PIPES Act requires excavators to promptly call the 911 emergency telephone number if damage to a pipeline results in the escape of any flammable, toxic, or corrosive gas or liquid that may endanger life or cause serious bodily harm or damage to property. PHMSA understands that excavators are often required to reimburse 911 centers for the cost of dispatching emergency response personnel to a damage site. Therefore, PHMSA proposes that states require excavators to call 911 in these instances, but is proposing to permit the excavator to exercise discretion as to whether to request that the 911 operator dispatch emergency response personnel to the damage site. However, the 911 operator will always have the discretion to dispatch emergency response personnel.

Item 7: ''Has the responsible state agency established a reliable mechanism to ensure that it receives reports of pipeline damage incidents on a timely basis?''

Paiute Pipeline and Southwest Gas Corporation commented that states that do not have interstate pipeline inspection and enforcement authority should treat an interstate pipeline operator as an excavator, not a pipeline operator. They consider that authority for inspection and enforcement of interstate pipelines should remain with PHMSA and no reporting of pipeline damage to the state is needed.

Southwest Gas Corporation commented that if PHMSA desires individual incident report information on non-Federally reported incidents from the states, PHMSA should recommend establishing a reporting time period with the state agencies. Southwest Gas Corporation noted that to eliminate any increased burden on the state agency, PHMSA should consider specific criteria levels for those state-only reportable incidents of which they want notification.

Paiute and Southwest Gas Corporation also commented that notification requirements are different than reporting requirements. They noted that state and Federal reporting requirements provide initial *notification* to the respective agency within a very short time (usually one to two hours) after discovery. The extent of product release, service interruptions, product loss, property damage, evacuations, injuries, fatalities, or environmental damage, which may not be known for days, are generally included on a written report form filed with the appropriate agency, within 30 days or less in accordance with state or Federal requirements. They noted that for interstate pipelines not subject to state jurisdiction, PHMSA has requirements for reporting incidents that meet certain criteria. The requirements include an initial notification deadline and a documented incident report deadline.

NAPSR inquired whether PHMSA is going to require that all reports be sent to PHMSA, or that specific reports be made available upon request, and commented that if PHMSA wants reports of all damages, it should simply require the operators report directly to PHMSA instead of placing an additional burden on the states.

Response

For a state to have an effective excavation damage prevention enforcement program, the enforcement authority must have a reliable mechanism for learning about excavation damage incidents. The details of how this mechanism functions, however, may vary considerably from state-to-state. For example, some state law may require mandatory reporting of excavation damages, while other states use complaint-based systems of reporting damages. Because PHMSA must evaluate state enforcement programs, PHMSA's goal is to assess how states learn of excavation damages and how this mechanism drives enforcement decisions, which has an effect on the adequacy of states' enforcement programs. PHMSA will not be collecting state damage reports, but may review them during evaluation of the state's program.

Item 8: ''Does the responsible state agency conduct investigations of all excavation damage to pipeline incidents to determine whether the excavator appropriately used the one-call system to request a facility locate, whether a dig ticket was generated, how quickly the pipeline operator responded, whether the pipeline operator followed all of its applicable written procedures, whether the excavator waited the appropriate time for the facilities to be located and marked, whether the pipeline operator's markings were accurate, and whether the digging was conducted in a responsible manner?''

NAPSR commented that the listing of anticipated review items during an excavation damage incident investigation may be helpful during

investigation of an event reportable as a pipeline incident or accident. However, it is unrealistic to expect an investigation of this magnitude into each and every event where a pipeline is damaged. NAPSR considers that the resources required would exceed those of entire state pipeline safety programs, and noted that PHMSA is considering these regulations at a time when many states are suffering financial hardship and their pipeline safety programs are struggling to remain afloat. Other commenters repeated this consideration.

NAPSR commented that the following listed items should be clarified and that, to the extent that any of them are incorporated into Federal regulations, PHMSA should clarify its intent and expectation for each item:

○ *''Whether the excavator appropriately used the one-call system to request a facility locate''*—Does having a ticket number suffice?

○ *''Whether the excavator appropriately used the one-call system to request a facility locate''*—Does one need to determine if the site was pre-marked?

○ *''Whether the dig ticket was generated''*—Does having the ticket number suffice? [Or] Does transmission of the ticket to operators need to be confirmed?

○ *''How quickly the pipeline operator responded''*—Is the question here whether the operator responded within the time frame allowed by the law or regulation in that state? And, would this information be relevant if the incident cause is that the facilities were marked and excavation practices were insufficient?

○ *''Whether the pipeline operator followed all of its applicable written procedures''*—Would this require a field audit and review of the operator's (employee or contract) locator on the site of the incident?

○ *''Whether the excavator waited the appropriate time for the facilities to be located and marked''*—Would this require verifying that all utilities had marked the site prior to the excavator performing the work? [Or] Would comparing the start date on the ticket to the incident date suffice?

○ *''Whether the pipeline operator's markings were accurate''*—Would this require field verification of the marks? If yes, how much delay can be justified in an excavator's downtime while the marks are being verified? Can the word of the operator and excavator be taken as fact? Can an emergency locate be performed and excavation activities resumed before arrival of a government inspector on site?

○ *''Whether the digging was conducted in a responsible manner''*—Would this require a field investigation including interviews with the foreman, operator and laborers? Can the results of the investigation by the operator be considered as fact? If it is ascertained that best practices were not followed, would this constitute a ''violation''? What are the essential elements of an ''investigation''?

NAPSR also commented that all DOT-reportable excavation damage incidents should be investigated. However, it noted that there are many thousands of DOT non-reportable incidents each year that involve superficial damage and no escaping gas. NAPSR considers that a one-size-fits-all investigation approach is not practical, and that the extent of investigation of non-reportable incidents should be on a state-by-state basis, left to the discretion of the responsible state agency. The state should be allowed to adopt a basis for investigation, such as establishing thresholds, or perform periodic sampling coupled with enforcement proceedings on the incidents sampled, so a deterrent effect is achieved.

NAPSR further commented that it may be possible that the PHMSA Office of Pipeline Safety Failure Investigation Policy document will play a role in connection with this aspect of the proposed rulemaking. NAPSR, therefore, suggested that this policy be considered along with other factors before formalizing a notice of proposed rulemaking.

AGA commented that the evaluation process should recognize those states that have adopted some basis for investigation. The basis could be event significance or it could investigate some subset of the damages, such as state reportable incidents. AGA noted that it is not feasible for a state agency to conduct a formal investigation for every occurrence of excavation damage to pipelines in a state. AGA also commented that most importantly, the state should have a mechanism that enables all stakeholders to express formal concerns and complaints with non-compliant parties, citing, for instance, that excavators should have a process to file complaints against utilities that fail to mark their facilities accurately or on time. Additionally, pipeline operators should have a process to file complaints or seek injunctions against excavators who either fail to notify the one-call center, fail to respect the markings or fail to wait the required time before beginning excavation activity.

APGA commented that this consideration should apply only to reportable incidents as defined in 49 CFR Part 191 because it would not be reasonable to expect operators and/or state agencies to investigate and report in this detail on all excavation damage events. APGA noted that some lesser level of reporting may be considered for events that do not meet the reportable incident criteria. Nicor suggested that states should have a process for determining which reported excavation damages will be investigated. APGA also noted that under the Distribution Integrity Management Programs (DIMP) rule, operators will annually report the number of excavation damages to PHMSA, and that these reports could also be made available to states.

Southwest Gas Corporation commented that if PHMSA means only reportable incidents (as defined by each state) that result from excavation damage, then determining the effectiveness of the state excavation damage prevention program should include a review of all excavation damage, not just excavation damage to pipelines, and include analysis of any trends and areas for improvement.

NUCA commented that states must ensure that those conducting damage investigations look at the entire excavation damage prevention process, from the excavator notifying the one-call center to the facility operator providing accurate and timely markings, to safe excavation and backfill practices by the excavator. NUCA believes that the ANPRM adequately addressed the factors needed to be investigated, but that several state authorities fail to fulfill their investigative responsibilities in all areas of excavation damage prevention, especially with regard to locating and marking of facilities.

Response

PHMSA's primary interest with regard to pipeline damage investigations is to ensure that state enforcement is fair and balanced and is targeted to the at-fault party in an excavation damage incident. PHMSA recognizes that states have resource issues to contend with and need the ability to focus investigatory resources on significant incidents as opposed to minor incidents. PHMSA intends to address this consideration in determining the adequacy of enforcement programs by reviewing state enforcement records and the adequacy of the investigations that preceded enforcement actions. In addition, PHMSA intends to assess states' incident investigation practices to ensure their adequacy in determining the at-fault party in an excavation damage incident involving a pipeline subject to PHMSA pipeline safety

regulations. PHMSA does not intend to use PHMSA's Failure Investigation Policy as a model for assessing the adequacy of state damage incident investigation practices.

Item 9: ''Does the state's damage prevention law provide enforcement authority including the use of civil penalties, and are the maximum penalties similar to the federal maximums (see 49 U.S.C. 60122(a))?''

With regard to the amount of the civil penalty, PUCO noted that the ANPRM does not indicate how large state maximum civil penalties would have to be in order to be considered ''similar'' to Federal maximums or the appropriateness of Federal maximum penalties against non-gas pipeline excavators. NAPSR commented that for pipeline operators some states' fines are equal to the Federal maximums, but that for excavators, fines may vary from small amounts per violation and gradually increase, depending on the circumstances, with no maximum. NAPSR noted that in practice, some states have found that an administrative process with modest fines (i.e., large enough to have a financial impact on the offender) works well. The larger the fine, the harder it is to collect and the collection process tends to consume a lot of the state agency's resources. NAPSR also commented that in state legislatures, the authorized amount of a civil penalty can be a serious issue. Legislatures may be reluctant to approve penalties so high that small companies could be put out of business, noting that although the assessed penalty does not have to be the maximum, the possibility remains a concern. NAPSR notes that the penalties incorporated in state laws may be the product of laborious and protracted negotiations—and the penalties provided for in 49 U.S.C. 60122 are quite high by many state standards. NAPSR notes that there is no evidence that state penalties must be comparable to Federal penalties for state enforcement to be effective, and that if such a comparison must be a consideration it should be a minor one.

MidAmerican Energy commented that the amount of the maximum civil penalty that may be assessed may not be the critical factor in evaluating a state's enforcement program. Instead, the aggressiveness and consistency by which a state investigates and enforces the excavation damage prevention laws may be a more effective gauge. Michigan Consolidated Gas noted that consideration should be made regarding a state's funding and resources to administer its enforcement program, i.e., does the state have the manpower to investigate, hold hearings, document findings, etc., for every violation found or complaint filed especially if this includes non-regulated or non-pipeline entities?

The PST commented that if PHMSA is going to ascertain whether the amounts of civil penalties assessed reflect the seriousness of the incident, then PHMSA must develop a set of guidelines that sets out each type of offense and the range of penalties that PHMSA deems appropriate. PST noted that this will also help to provide clarity regarding the question in the ANPRM about whether a state program's civil penalties ''are the maximum penalties similar to the Federal maximums.''

The several Texas pipeline associations commented that a substantial portion of state grant monies should be tied to enforcement and collection of substantial civil penalties for failure to comply with a state one-call law that is found to be adequate. They also suggested that penalties related to excavation damage prevention being collected by states should be dedicated to pipeline safety, and not just the general revenue fund.

Spectra Energy Transmission commented that PHMSA's criteria should consider a state's historical enforcement action against excavators that fail to place one-call tickets prior to excavating or fail to adhere to the mandatory waiting period following one-call notification. Spectra also commented that states should take enforcement action against intrastate pipeline or distribution system operators that fail to respond to one-call tickets or fail to properly locate or mark their facilities. They noted that penalties should escalate for repeated violations and that the existence of repeat violations may signal a weakness of deterrents and need for PHMSA action.

Response

While state civil penalty levels must be high enough to deter violations, PHMSA recognizes that states will often be conducting enforcement against smaller entities. Therefore, penalty levels lower than the Federal levels may be sufficient to achieve deterrence. Accordingly, PHMSA does not propose to require states to assess civil penalties at a level equal to Federal civil penalties. PHMSA's primary interest with regard to state civil penalties is that (1) civil penalty authority exists within the state, and (2) civil penalty authority is used by the state consistently enough to deter violation of state excavation damage prevention laws. PHMSA seeks comments on this issue.

PHMSA does not intend to address impacts to pipeline safety grant funding levels for states with excavation damage law enforcement programs PHMSA deems adequate.

Item 10: ''Has the state designated a state agency with responsibility for administering the damage prevention laws?''

Marathon Pipeline commented that a state agency should be responsible for receiving and investigating reports of pipeline damage and near miss incidents caused by excavation. Paiute Pipeline agrees that the agency responsible for administering the excavation damage prevention laws should be designated in states where excavation damage prevention laws exist. Echoing this comment, the Texas pipeline associations commented that the first criterion for a state should be a single state agency designated to oversee the state's underground excavation damage prevention program. They noted that a state agency must not only be designated as the agency responsible for the program, but must also have the authority to enforce the safety standards to protect underground facility operators, excavators, and the public.

Going further, AGA and AGL Resources commented that effective excavation damage prevention requires more than merely designating a state agency with responsibility for administering the excavation damage prevention laws. They noted that although many states have agencies that have been delegated authority for administering the excavation damage prevention laws, often the state agency has not been given either the personnel, financial resources, or the incentives needed to exercise its authority. The three Texas pipeline associations commented that the adequacy of funding should be documented and reported by the states through several basic data elements. Such elements could include items like ratio of reported damages to calls, numbers of damages reported per mile and number of enforcement actions completed. There may be better measures of enforcement effectiveness, but whatever is used must demonstrate that enforcement is occurring.

AGL Resources also commented that a state should establish, designate and utilize an ''advisory type'' committee made up of the various stakeholders as the responsible state agency.

Response

PHMSA's primary interest in this area is assessing whether a state has a

designated excavation damage prevention law enforcement authority to act as the lead in law enforcement cases. That authority needs to establish a close working relationship with the state pipeline investigators and develop a familiarity with the state's pipeline safety and damage prevention laws and requirements. Once that authority begins to take enforcement action consistently, PHMSA will be interested to learn whether the state enforcement authority has adequate resources to perform its mission. In addition, PHMSA's periodic review of states' damage prevention enforcement records performed under the state certification process will provide PHMSA with information on the adequacy of enforcement resources.

Committees comprised of representatives of all excavation damage prevention stakeholders that advise enforcement agencies may help to ensure fair and balanced excavation damage prevention law enforcement. However, PHMSA does not believe that advisory committees should have a ''veto'' on enforcement decisions made by responsible officials and PHMSA also believes that advisory committees are not the only effective means of ensuring fair and balanced enforcement. PHMSA, therefore, does not propose to use as a criterion whether states utilize advisory committees in assessing the adequacy of states' enforcement programs.

Item 11: ''Does the state official responsible for determining whether or not to proceed with enforcement action document the reasons for the decision in a transparent and accountable manner? Are the records of these investigations and enforcement decisions made available to PHMSA?''

NAPSR commented that in some jurisdictions this would be privileged information not subject to disclosure. It also noted that a decision on whether to take formal enforcement action is a decision on whether to prosecute; thus, the concept of ''prosecutorial discretion'' may apply. NAPSR also inquired about what kind of documentation would be expected.

Paiute Pipeline and Southwest Gas Corporation commented that transparency and consistency are important to an effective enforcement program. They consider that states should be responsible for documenting and recording investigations, decisions, and enforcement actions taken or not taken to ensure consistency in decisions and enforcement actions with all excavators. They also commented that PHMSA should consider if instead of being informed of every investigation and enforcement decision of every state, it would be more effective for PHMSA to recommend specific criteria levels for being informed of investigations and enforcement decisions.

Response

PHMSA will be reviewing state enforcement records to help assess whether states that have enforcement authority are actually using their authority and how they are using their authority. PHMSA believes that states should be able to explain the reasons behind their decisions as to whether or not to take enforcement action, but is not necessarily seeking access to privileged and confidential information.

Item 12: ''With respect to cases where enforcement action is taken, is the state actually exercising its civil penalty authority? Does the amount of the civil penalties assessed reflect the seriousness of the incident? Are remedial orders given to the violator legally enforceable?''

AGA, API and AOPL supported the focus on utilization of civil penalties to enforce excavation damage prevention laws. API and AOPL supported PHMSA's proposed threshold criteria to determine whether a state has established and exercised authority to assess civil penalties for violation of one-call laws. They noted that most of the other criteria listed in the ANPRM derive from these criteria and demonstrate that laws are in place and being enforced.

AGA and others, including several pipeline operators, commented that fines and penalties should be significant enough to affect behaviors, yet they should not be so high that they give excavators incentive to be deceitful or fearful of reporting damages due to the potential repercussions. They consider that fines and penalties should escalate for repeat and willful violators, particularly those who have a history of being counseled on the importance of adhering to all safe digging laws and practices. They also commented that the maximum fine or penalty for any Federal administrative enforcement actions taken within state jurisdiction should be no more than the maximum amount cited in the state law, even if that state's enforcement has been deemed inadequate. They commented that maximum penalties in 49 U.S.C. 60122(a) should not be used for excavation damage prevention law enforcement as they are excessive for excavation damage prevention programs and can have adverse unintended consequences.

Nicor commented that the state's one-call statute should set forth aggravating or mitigating factors in determining the civil penalty. They also commented that when considering a history of noncompliance, excavator violations should not aggravate the penalty calculation for locating and marking violations, and vice versa, and that penalty assessments should be transparent to all excavators.

Paiute Pipeline and Southwest Gas Corporation commented that PHMSA's evaluation of a state's enforcement program should consider whether the state has the ability to exercise its authority to assess civil penalties and whether it is fair and consistent in doing so. They also noted that not all damage incidents warrant financial penalties, and PHMSA should not limit its review to only penalties of a financial nature. They acknowledged that civil penalties are part of an effective excavation damage prevention program; however, they commented that in some states excavation damage prevention training has been effectively mandated in lieu of civil penalties.

Response

PHMSA's primary interests with regard to state civil penalties for violations of excavation damage prevention law are that: (1) Civil penalty authority exists within the state, and 2) the state uses civil penalty authority to deter violation of state excavation damage prevention laws. PHMSA proposes to assess these two factors through a review of state law/regulation and records of past enforcement actions. PHMSA does not intend to hold states to an overly-prescriptive construct of civil penalty authority or to an overly-prescriptive civil penalty fee schedule. Sanctions other than civil penalties may have the desired effect of deterring non-compliant behavior. State excavation damage prevention enforcement records should be made available to the public to the extent practicable. PHMSA seeks comment on these issues.

Item 13: ''Are annual statistics on the number of excavation damage incidents, investigations, enforcement actions, penalties proposed, and penalties collected by the state made available to PHMSA and the public?''

AGA agreed that statistics are useful to understand trends and areas deserving attention, that past enforcement actions are one barometer of the enforcement activity in the state, and that past reports of enforcement against excavators should be reviewed for the type of excavator that is being fined or penalized. AGA also

commented that other items should be considered to determine whether or not enforcement has been active and effective, but noted that many states only collect data on excavation damages involving natural gas pipelines. AGA commented that each state should be expected to establish some clear, minimum reporting guidelines for the state enforcement agency, but that PHMSA should not expect the various state reporting guidelines to be uniform.

NAPSR commented that although annual statistics are important, PHMSA should not place much emphasis on comparing the states against each other on the basis of these parameters. It noted that there is bound to be significant variability between the states due to factors including, but not limited to, the volume of excavation activity in the state, the density of the underground infrastructure, the number of one-call centers, the resources available to the entity in charge of enforcement, and the political climate in the state with respect to the prevailing preference as to what the excavation damage prevention law should cover.

Paiute Pipeline and Southwest Gas Corporation commented that having data available to the public is not the standard for which a state's program should be judged. They consider that damage incident investigations, enforcement actions, and penalties proposed or collected should not be provided to the general public without providing a clear and concise description of the information, as most of the general public has limited knowledge of, or experience with, the information that would be provided.

Nicor commented that statistics collected should include damages by all excavators and on all facilities, not just pipelines. Paiute and Southwest Gas Corporation noted that data from the CGA DIRT could be used for analyzing excavation damages; however, providing damage information to DIRT is not mandated in all states.

NUCA commented that timely gathering of damage data is important, as is the type of information collected. However, NUCA considers that damages incurred by the excavator should be collected as well. This should include costs to the excavator in cases where a facility is hit because of a failure to locate and mark facilities accurately in a timely fashion, including any damage to the excavator's equipment or property, and any downtime incurred by the excavator while the true location of underground facilities is determined.

Washington Transportation Builders Association commented that its industry is concerned that contractors will be singled out for incidents that were caused by others, such as mismarked utilities and failure to address utilities during the design process, and that PHMSA should determine what are appropriate ''annual stats on damage incidents'' to report to the public.

API and AOPL commented that the reporting requirements suggested as a basis for evaluation could have the effect of requiring duplicate (or even triplicate) reporting for pipeline operators and/or other regulated entities. They noted that given that recently proposed revisions to PHMSA's own accident and incident reports (7000.1 and 7000.2) would collect, and CGA's DIRT report already collects, significant information about excavation damage incidents, PHMSA should consider changing the reporting requirements by which a state program is judged to allow for the use of the CGA or PHMSA data. Similarly, the WUCA commented that state agencies and PHMSA should explore means to share reported information electronically rather than imposing additional reporting requirements.

The Michigan Public Service Commission (PSC) commented that reportable information should include the nature of the incident, the cause of the incident, the extent of service interruptions, property damage, evacuations, injuries and fatalities, and that product loss would be factored into the total dollar amount of the incident.

Response

Variability among the states makes it difficult to seek standardized information pertaining to excavation damage incidents, investigations, enforcement actions, penalties proposed, and penalties collected. Variability also makes it difficult to compare state enforcement programs. PHMSA does, however, propose under criterion 3 that availability of this type of information to the general public be a factor in evaluating state enforcement programs because public understanding and involvement of state enforcement can help to drive more effective enforcement.

Additional Comments Related to Section IV.A

Commenters were also invited to comment on additions and alternatives to the items listed in the ANPRM, as noted above, that may be equally suitable for the purpose of evaluating the adequacy of state excavation damage prevention law enforcement programs.

Clarification

PST and several other commenters noted that state excavation damage prevention programs apply to many utilities besides pipelines, and that it is unclear from the ANPRM whether a state's entire excavation damage prevention program, including other utilities such as waterlines, sewer, electric, etc., will be judged or whether PHMSA will only review how excavation damage prevention is working for pipelines. PST commented that it is also unclear whether PHMSA intends to expand its authority to include damage to utilities other than pipelines, and if not, what effect PHMSA's selective enforcement of only the part of the program regarding pipelines will have on a state's more comprehensive excavation damage prevention program. Will states be driven to create two separate excavation damage prevention programs? What would be the unintended consequences of not regulating utilities other than pipelines? Similarly, the TRA commented that the proposed rule should distinguish between enforcing one-call laws and pipeline facility excavation damage prevention. TRA noted that one-call laws in many states cover many different types of utilities, and that it appears that a state may meet the requirements stated in the PIPES Act by enforcing pipeline facility excavation damage prevention without exercising the same level of authority over other underground utilities, such as water, sewer, telecommunications and electricity.

PST also commented that it concurs with the general criteria set out in the ANPRM for determining whether a state's enforcement program is adequate, and the use of the nine elements from the PIPES Act as a foundation for excavation damage prevention law enforcement programs. However, it noted that PHMSA also needs to consider and clarify:

1. Whether each criterion is of equal importance or if a relative weight should be assigned to each;
2. Whether the failure of a state to meet a single criterion results in the state's damage prevention program being inadequate; and,
3. Whether the failure to meet certain ''core'' criteria or attain a ''passing'' score (based on relative weights of each criterion) will trigger an ''inadequacy'' determination.

Response

PHMSA proposes to review the adequacy of states' excavation damage prevention law enforcement programs.

However, PHMSA's regulatory authority extends only to pipelines subject to PHMSA's pipeline safety regulations. PHMSA does not have the authority to enforce Federal excavation damage prevention standards in cases of damage to underground utilities other than pipelines. Despite PHMSA's limited regulatory authority, PHMSA believes that if states implement effective enforcement programs that are driven by the goal of preventing excavation damage to pipelines, other utilities and excavation damage prevention stakeholders will benefit. PHMSA does not intend for states to develop separate excavation damage prevention programs for pipelines and other utilities.

PHMSA proposes in this notice to use seven criteria to evaluate state enforcement programs. PHMSA, however, will not take a one-size-fits-all approach. Because of the wide variability among state enforcement programs, PHMSA believes these reviews must take into account the experiences of each state and limit comparison between state programs.

PHMSA's primary goal in evaluating the adequacy of state excavation damage prevention law enforcement programs is to seek clear evidence that:

- State laws/regulations are adequate to protect underground infrastructure from excavation damage;
- The state has a designated authority responsible for enforcement of the excavation damage prevention law;
- The enforcement authority has a reliable means of learning about excavation damage incidents and possible violations of state excavation damage prevention law; and,
- Enforcement authority is exercised effectively, including the use of civil penalties, to ensure compliance with state excavation damage prevention law.

There are multiple ways a state can meet the more subjective criteria. Reviews of state enforcement programs would entail detailed conversations with excavation damage prevention stakeholders at the state level and must allow for some flexibility to permit a thorough and accurate review of state enforcement programs.

PHMSA strongly believes that excavation damage prevention law enforcement is a state responsibility. Overly prescriptive Federal criteria for the review of state enforcement programs would be counter to this principle. This rulemaking is intended to provide limited, backstop Federal administrative enforcement authority regarding excavation damage to pipelines in states PHMSA finds to have inadequate enforcement programs and to encourage those states to enhance their existing excavation damage prevention programs or to implement programs to include effective enforcement through the use of civil penalties.

Criteria for Review of SDP Enforcement Programs

AGC of Texas recommended that when evaluating the adequacy of a state's excavation damage prevention program, PHMSA should include criteria for a mandatory positive response system, which requires operator and excavator participation, enforceable with penalties.

The WUCA commented that state excavation damage prevention law enforcement processes should include an appeals process that includes an appeals board with members who have adequate knowledge of design and construction administration processes, allowing them to assign responsibility to the appropriate party. They commented that failure to assign responsibility to the appropriate parties, such as operators, one-call centers, locators and design engineers, creates uncontrollable risk for contractors.

API and AOPL commented that PHMSA should establish clear guidelines and criteria for determining which state excavation damage prevention programs are effective and effectively enforced, and noted that these criteria should be based on transparent data, where available, but should not impose additional data collection on the states. AGA noted that the most important criteria are the ones involving timely reporting of pipeline damages, a universal requirement for all parties to notify the one-call center prior to excavation, establishment of a single agency responsible for oversight of excavation damage prevention laws, and an effective enforcement process. AGA also commented that the criteria regarding the evaluation of state programs, as listed in the ANPRM, appears thorough, but acknowledged that how the criteria are weighted and actually evaluated is open to several different approaches.

Several commenters expressed support for the need and intent of the proposed rulemaking, the development of criteria by which to evaluate state excavation damage prevention programs, and Federal administrative enforcement, if needed, when state enforcement is deemed inadequate. EPPG commented that a ''standard model'' for enforcement of excavation safety is needed to ensure existing state programs are not audited against unsettled standards. However, EPPG commented that Federal administrative enforcement intervention should not occur prior to a state being audited and provided an opportunity to improve on any deficiencies.

NAPSR expressed the view that most of the items listed in the ANPRM are subjective and that additional examination of the assessment factors may be required to further eliminate some of the subjectivity. Alternatively, they suggested there may be need to develop some non-mandatory guidance to provide added detail.

PST commented that if PHMSA decides to create a situation where a state can be found to have a program that is ''nominally adequate,'' PHMSA needs to define clearly what this means and how a state can achieve an ''adequate'' status. PST's preference would be for PHMSA to clearly communicate possible areas where improvements could be made in a state's program rather than to create a hard to define status of ''nominally adequate.'' They encouraged PHMSA to create criteria that are clear enough that a state's program is either adequate or inadequate.

Spectra Energy commented that PHMSA criteria should weigh whether state excavation damage prevention laws include requirements for excavators to notify the state and the pipeline operator if they damage a pipeline during excavation and whether enforcement procedures exist for instances of non-compliance.

TRA commented that the threshold criterion for evaluating the adequacy of a state's excavation damage prevention program should include the lack of exemptions to the state's excavation damage prevention laws, such as exemptions for state agencies, municipalities, agricultural entities, railroads, and other groups of excavators. TRA cautioned, however, that it, and likely other state regulatory agencies, does not have authority to make changes to the state pipeline excavation damage prevention law. To minimize exemptions, much effort and time must be expended to reach consensus regarding the entities to be exempted and to determine the extent of an exemption. While TRA agrees with the threshold criteria noted in the ANPRM, TRA asserted that as part of the evaluation to determine the adequacy of a state's enforcement of its pipeline excavation damage prevention law, the state's record of progress in strengthening its law should be considered. Every effort should be made to allow a state to continue working with stakeholders to improve pipeline excavation damage prevention laws without Federal intervention.

AGA commented that PHMSA should build flexibility into how it applies the performance criteria for the 13 criteria listed in the ANPRM. AGA noted that several of the items listed do not lend themselves to a simple rating or score, or even a definitive 'yes' or 'no' evaluation. For example, a state may require all parties to call before they dig, but it may give certain exemptions when the type of excavation involves the use of hand tools, noting that CGA's 2008 DIRT report indicates that 22 states fall into this category. AGA wondered how this type of scenario would affect a state's evaluation.

Response

PHMSA does not propose to include a criterion for a mandatory positive response system that requires operator and excavator participation. PHMSA believes this criterion is outside the scope of this rulemaking.

Effective excavation damage prevention enforcement programs require adequate processes for identifying the at-fault party in damage incidents to enable action to be taken against the at-fault party in any enforcement case. PHMSA does not consider this proposed rule to unfairly target excavators for enforcement action, but instead to address an enforcement gap in pipeline safety excavation damage prevention.

PHMSA does not propose to make a distinction between ''nominally adequate'' and ''adequate'' state enforcement programs. The proposed criteria for evaluating state enforcement programs are designed to establish the threshold for minimum adequacy of state enforcement programs. PHMSA intends to deem state enforcement programs either adequate or inadequate through use of the review criteria and processes outlined in this NPRM. PHMSA does not propose to use weighted criteria in the evaluation.

B. Administrative Process

Section IV.B of the ANPRM sought comment on the administrative procedures available to a state that elects to contest a notice of inadequacy, should it receive one. It noted that the procedures would likely involve a ''paper hearing'' process where PHMSA would notify a state that it considers its excavation damage prevention law enforcement inadequate (i.e., following its annual review), and the state would then have an opportunity to submit written materials and explanations. PHMSA would then make a final written determination including the reasons for the decision. The administrative procedures would also likely provide for an opportunity for the state to petition for reconsideration of the decision, and would likely allow the state to show later that it has improved its excavation damage prevention law enforcement program to an adequate level and request that PHMSA discontinue Federal administrative enforcement in that state.

The ANPRM asked for comments regarding whether the described process would strike the right balance between the Congressional directive to PHMSA to undertake Federal administrative enforcement, where necessary, while providing a state with a fair and efficient means of showing that the state's enforcement program is adequate.

Section IV.B suggested that PHMSA would likely evaluate state excavation damage prevention enforcement programs on an annual basis, considering factors such as those set forth in Section IV.A. It noted that this annual review would likely include a review of all of the enforcement actions taken by the state over the previous year.

Section IV.B noted that if the state's enforcement program is ultimately deemed inadequate in its most recent annual review, direct Federal administrative enforcement against an excavator who violated Federal requirements and damaged a pipeline in that state could proceed without further process.

The ANPRM also asked if the process should enable PHMSA to evaluate a state enforcement decision concerning an individual incident during the course of the year and potentially conduct Federal administrative enforcement where a state deemed ''nominally adequate'' in its most recent annual review decided not to undertake enforcement for an incident that PHMSA believes may warrant enforcement action.

Process for Determining the Adequacy of State Enforcement

PUCO commented that the administrative due process for determining whether a state program is ''inadequate,'' as stated in the ANPRM, is very general and appears to be an informal process. PUCO noted that it is unclear whether the determination that a state program is ''inadequate'' is to be made by the head of PHMSA, PHMSA regional managers, a board or panel at PHMSA, or some other entity altogether.

The WUCA commented that PHMSA should provide information and guidance that will clearly outline what the state must do to create an acceptable damage enforcement program by PHMSA's standards.

The Greater Chicago Damage Prevention Council commented that it endorses the development and implementation of best practices to prevent damage to pipelines and other underground facilities, but that it opposes enactment of the proposed rule. Its opposition is based on the following regarding Section IV, Paragraph B—Administrative Process: The proposed rule: (a) Fails to use imperative language and speaks in generalities, such as, what ''the process would likely involve;'' (b) is devoid of elements mandating PHMSA provide those states deemed ''inadequate'' or ''nominally adequate'' with detailed evaluation results that support PHMSA's determination; (c) fails to provide adequate due process in the appeal of PHMSA's determination; in fact, there is no appeal process identified relative to PHMSA's ''final'' determination, other than to try again next year; (d) offers the state no opportunity whatsoever to undertake corrective action or improvement prior to PHMSA undertaking enforcement actions; and (e) fails to ''strike the right balance between the Congressional directive to PHMSA to undertake Federal administrative enforcement where necessary while providing a state with a fair and efficient means of showing that the state's enforcement program is adequate.'' The Council also noted that the proposed rule fails to meet ''Element 7,'' stipulated in the Rule as mandatory for a ''comprehensive damage prevention program.'' The commenter noted that the proposed rule is limited to PHMSA regulated pipelines and excludes all other underground facilities. It considers that by undertaking enforcement actions relating only to pipelines, PHMSA creates a de facto dual enforcement system, which in itself is a key criterion in determining whether an enforcement program is adequate. Therefore, the proposed rule establishes an ''inadequate enforcement program'' and should not be implemented.

Response

This NPRM proposes a clearly-defined process for determining the adequacy of state enforcement programs. PHMSA is authorized by Congress through the PIPES Act of 2006 to pursue this rulemaking. The ANPRM was designed to solicit input from interested stakeholders on how to construct the proposed rule. To the extent the ANPRM used the term ''likely'' in discussing a given approach, it only means that PHMSA has not made any final decisions on anything at the ANPRM or NPRM stage. Once the final

rule is published, the word likely will not appear in the text of any final requirement.

PHMSA agrees that specific reasoning should be provided for any declaration of state excavation damage law enforcement program inadequacy. In addition, PHMSA would evaluate states' progress on a yearly basis to assess adequacy. PHMSA proposes to make public the results of the reviews of state excavation damage prevention law enforcement programs. As noted above, comparisons of states are not practical given the wide variety seen in state enforcement programs.

Findings

Missouri PSC commented that a state's enforcement program should either be deemed adequate or not adequate; a process that would set ''levels'' of adequacy would simply be more subjective. Similarly, API and AOPL noted that a state either has an adequate program or it doesn't, and that the state should not be held in ''limbo'' and should not constantly be second-guessed. They agree that if a state program is deemed deficient then PHMSA should work with the state to make it better.

The WUCA commented that if a written statement is provided to the state notifying it of an inadequate excavation damage prevention law enforcement program, specific reasoning must be provided for the ruling. Additionally, rather than a ''likely'' opportunity to provide a showing at a later time, if deemed inadequate, a clear policy should be developed.

AGC commented that the administrative procedures should include public notice of PHMSA's determination of inadequacy in the **Federal Register** with a detailed explanation of the circumstances justifying PHMSA's determination.

Paiute Pipeline and Southwest Gas Corporation commented that PHMSA should not pursue a comparison of one state to another, but should only evaluate individual states through review of their excavation damage prevention programs, including state laws and enforcement authority.

Response

PHMSA is proposing to have state excavation damage prevention law enforcement programs be deemed either adequate or inadequate; PHMSA is not proposing to establish levels of adequacy. PHMSA intends to continue its SDP grant program, one-call grant program, and various other initiatives designed to assist states with improving their excavation damage prevention programs. These initiatives were described in more detail in the ANPRM.

Federal Administrative Enforcement

Regarding the precept in the ANPRM, *''If the state's enforcement program is ultimately deemed inadequate, direct Federal administrative enforcement against an excavator who violated the state's damage prevention law and damaged a pipeline in that state could proceed,''* AGA commented:

- PHMSA should also consider what will trigger Federal administrative enforcement action. Is damage the only trigger or is there a potential for enforcement action due to repeated complaints from operators of reckless excavation activities? (e.g., no notification to 811; failure to hand-expose pipeline; etc.)
- The process should not allow PHMSA to evaluate a state enforcement decision that has already been made.
- Only states determined to have an inadequate program should have the possibility of PHMSA intervention.

Like AGA, APGA, AGC, others commented that PHMSA should not evaluate a state's enforcement decision concerning an individual damage incident in a state where PHMSA has found the enforcement program to be adequate or nominally adequate. Instead, APGA suggested PHMSA should consider whether certain high profile events received adequate enforcement action by the state in the course of its periodic review of the state's overall enforcement program.

NAPSR strongly suggested that only the states with inadequate programs be subject to PHMSA examination of enforcement decisions made at the state level, and only after PHMSA determines the principal factor of the state's inadequacy has been repeated failure to enforce the law against clear cases of egregious violations. Similarly, Nicor stated that if a state is deemed nominally adequate, the state's enforcement decision concerning an individual event should be upheld, but PHMSA should provide guidance to that state so that it improves its program for the next review. EPPG noted that if PHMSA took action in a state that had passed the most recent assessment of its enforcement program, it would undermine the purpose of the assessment itself.

EPPG commented that PHMSA should define how enforcement responsibility between PHMSA and the state would be implemented. EPPG noted that as important as it is to identify and intercede in states found to have inadequate one-call enforcement, it is also important to clarify how enforcement responsibility should be conducted elsewhere. Excavators should not be exposed to multiple, divergent and possibly conflicting enforcement authorities and standards, and the standards and procedures should clearly define which agency will have jurisdiction.

NUCA commented to reemphasize the importance of balanced enforcement in that Federal administrative enforcement against an excavator who violated the state's excavation damage prevention law should be coupled with Federal administrative enforcement against pipeline operators who fail to locate and mark their pipelines accurately in accordance with the law.

API and AOPL commented that they question the efficacy of direct Federal administrative enforcement against an excavator who violates a state's excavation damage prevention law and damages a pipeline. They noted that state one-call laws vary with respect to elements such as notification time, ticket life, tolerance zone, and white lining. Without a Federal minimum standard to support Federal administrative enforcement, they do not believe it is appropriate or practical for PHMSA to enforce state laws evenly or consistently.

AGC noted that the goal of enforcement should be to fairly arrive at rational outcomes, such as education and penalties that correspond to the gravity of the violation, without imposing unnecessarily high transaction costs on any participant, including the enforcement authority.

PST offered comments/questions regarding consequences to states that choose to be inadequate. PST noted that ''PHMSA should clearly define in the NPRM what the consequences are for a state that is found to have an ''inadequate'' or ''nominally adequate'' excavation damage prevention program. Will excavation damage prevention grants/monies be the only thing affected or will other state funding and authority be penalized as well?'' Additionally, PST noted ''While we agree with PHMSA and Congress that states have a responsibility to ensure a system is in place to protect underground pipelines, what are the consequences if a state chooses to ignore that responsibility in hopes that PHMSA will take it on? Will the financial consequences or loss of authority be greater than the possible short-term financial benefits to a state faced with a budget crisis? Is PHMSA staffed and funded adequately to take on such a greater enforcement role?''

Response

PHMSA intends to evaluate the existence and adequacy of state excavation damage prevention law enforcement programs. PHMSA is proposing that this will be done, in part, by reviewing state enforcement records to ascertain whether a state is effectively applying its enforcement authority, assuming such authority is provided for in state excavation damage prevention law. PHMSA proposes to evaluate states' pipeline damage investigation practices to ensure they are adequate to determine the at-fault party for excavation damage incidents. As noted, excavators will be subject to Federal administrative enforcement only in states determined to have inadequate enforcement programs, and PHMSA is proposing to make decisions regarding Federal administrative enforcement in those states on a case-by-case basis.

Balanced enforcement of excavation damage prevention laws is important. As appropriate, PHMSA is proposing to enforce either this rule (once it is final) against excavators or existing regulations applicable to pipeline operators and their contractors against the at-fault party. PHMSA has enforced existing excavation damage prevention regulations applicable to pipeline operators. PHMSA believes that enforcement of existing excavation damage prevention regulations applicable to pipeline operators, at both state and Federal levels, is a deterrent to non-compliant behavior and reduces excavation damage to pipelines.

PHMSA does not have authority to enforce state laws and has included the proposed Federal requirements for excavators in this proposed rulemaking.

PHMSA proposes to consider state enforcement program adequacy to be a factor in determining state pipeline safety grant funding levels (after a lengthy grace period). PHMSA believes this approach will provide a financial disincentive for states to disregard their enforcement responsibility. PHMSA is seeking comment on this conclusion.

Appeals

Several commenters, including API, AOPL, PUCO, and Michigan Consolidated Gas, commented that states should be provided opportunities to respond to and appeal PHMSA's decisions on the adequacy of a state enforcement program. PUCO noted that procedures for determining the adequacy of a state's program and the process for appeals for reconsideration should be more fully described, and include a requirement for PHMSA to review and respond to any petition for reconsideration within a certain time frame. API, AOPL, Nicor, and Panhandle Energy support the development of administrative procedures that would be available for states that elect to contest a notice of inadequacy. Nicor noted that this would afford the state a fair and efficient means of showing that the enforcement program is adequate.

PUCO noted that a definition of ''nominally adequate,'' a description of how states may be qualified as ''nominally adequate,'' and a listing of the implications of this designation for state programs should be provided.

MidAmerican Energy noted that the ''paper hearing'' process described in the ANPRM would be appropriate.

Response

The criteria PHMSA will use to determine the adequacy of state enforcement programs and the administrative process for a state to appeal a determination of inadequacy are proposed in this NPRM.

Civil Penalties

AGC commented that PHMSA must consider education as an alternative or supplement to civil or other penalties, and in cases where financial penalties are assessed revenues generated must be reserved to finance excavation damage prevention education and technologies used in support of excavation damage prevention activities.

Response

Enforcement tools other than civil penalties, such as compliance orders, can be useful tools for enforcement of excavation damage prevention laws. However, PHMSA believes that civil penalty authority and effective use of that authority are essential components of effective excavation damage prevention law enforcement programs. PHMSA does not propose to require the use of sanctions other than those provided in existing pipeline safety statutes or regulations.

Costs

API and AOPL noted that PHMSA may consider using its grant resources, such as the SDP grants, to encourage state compliance with the elements of this rulemaking. That may require changes to the existing grant criteria that could be included in a proposed and final rule.

Response

PHMSA agrees that the SDP grant program can be targeted to improve state excavation damage prevention law enforcement programs, and PHMSA does have discretion in weighting the evaluation criteria applicable to SDP grant applications. However, PHMSA has not proposed any changes to the SDP grant criteria in this proposed rule.

Process

AGC commented that subsequent to public hearings, a commission should be convened to establish a predetermined timeline in which states must meet certain benchmarks demonstrating steps to address inadequacies and that any penalties or enforcement be coupled with direct enforcement against pipeline operators who fail to accurately locate and mark facilities.

The Texas pipeline associations commented that the first step in the process used to determine the adequacy of a state's program should be an evaluation of each state's program against a common set of known factors. They commented that once PHMSA completes its evaluation, the state should be permitted to comment on the evaluation before it is finalized. They also consider that excavation damage prevention stakeholders should be given an opportunity to comment on the evaluation. When a final determination has been made and a state's program is found inadequate in some respect, the state should be provided an opportunity to make improvements to its program.

API and AOPL commented that PHMSA should use a multi-step process when determining whether a state's program is inadequate, perhaps including preliminary determinations, interim determinations, and eventually final determinations. They also noted that at each step of the process, PHMSA should clearly describe, in functional rather than prescriptive terms, changes required for a state's program to be deemed adequate. They commented that the process for this provision should be the same as is currently used in the state certification program and that assessment of a state's program should be at the program level, not at an individual case level. API and AOPL also consider that enough time should be granted at each step of the process to allow states time to modify their programs as needed at the legislative and/or regulatory level. This process should, however, be completed expeditiously to ensure that compliance is timely and the public interest is preserved.

Similarly, PST commented that the administrative process for states to contest notices of inadequacy described in the ANPRM seems fair to the states. Among the concerns PST expressed, however, are the time periods that

would be established for: (1) PHMSA to issue a notice of inadequacy after its annual review; (2) a state to contest this notice; (3) PHMSA to make a final written determination; (4) a state to petition for reconsideration; and (5) PHMSA to rule on the petition for reconsideration. PHMSA needs to strike the right balance between waiting too long to intervene and not waiting long enough.

The Texas pipeline associations echoed this comment in that the opportunity for a state to make improvements must take into account an appropriate time period for the state agency to make the required improvements in a manner complying with state law. These time periods will need to be tailored to each situation because some may require legislative action while others may only require an internal agency policy change. They noted that while Federal administrative enforcement may be necessary in some states, reasonable efforts should be exerted and sufficient time provided to promote adequate state-based enforcement of excavation damage programs. They suggested that there may be situations where PHMSA could facilitate discussions between state stakeholders to establish a plan to address certain deficiencies.

Missouri PSC commented that the process outlined in the ANPRM appears to strike an appropriate balance between the Congressional directive to PHMSA to undertake Federal administrative enforcement while providing a state with a fair and efficient means of showing that its enforcement program is adequate. However, Missouri PSC noted further comments may well be necessary depending on the provisions of the actual proposed rule.

NAPSR questioned how PHMSA would anticipate seeking information from other agencies in those states where the enforcement agency is not the state pipeline safety agency?

Response

PHMSA does not propose to convene a commission to establish a predetermined timeline in which states must meet benchmarks demonstrating steps to address inadequacies in their damage prevention enforcement programs. PHMSA believes the state enforcement program evaluation criteria proposed in this NPRM, in effect, establish benchmarks.

PHMSA has proposed the process for evaluation of state enforcement programs and the process by which states may contest notices of inadequacy. PHMSA does not propose to consider excavation damage prevention stakeholder comments on state enforcement program evaluations.

PHMSA proposes to evaluate the states' enforcement programs whether they are administered by state pipeline agencies or other state authorities. PHMSA proposes to communicate the implications of this proposed rule with state enforcement authorities outside of state pipeline safety agencies, including attorneys general, state police agencies, and other authorities, as required.

PHMSA would plan to make its determination as to the adequacy of a state program as soon as practicable after completion of the state annual review. A state would then have 30 days from receipt of the notice of inadequacy to respond.

Review Cycle

API and AOPL noted that PHMSA should require annual reviews of state excavation damage prevention programs, but such reviews should be initiated after initial adequacy determinations have been completed. They noted that annual reviews should focus on continuing effectiveness indicators (i.e., whether or not excavation damage incidents are declining) and not simply on whether every incident has merely been documented and investigated.

NAPSR commented that the frequency of review of a state excavation damage prevention program should be tailored to the level of adequacy initially determined for the program, using criteria included in the final rule resulting from this ANPRM. Thus, states with the lowest level of initial adequacy could be reviewed annually, while states with higher levels could be reviewed less often. NAPSR also noted that the ANPRM speaks about an annual review that will likely include a review of all of the enforcement actions taken by the state over the previous year, and questioned whether this would be the state liaison asking a few additional questions during the annual evaluation or something more substantial with extensive documentation.

Similarly, Paiute Pipeline and Southwest Gas Corporation suggested that if a state is found nominally adequate in its most recent annual review, PHMSA should recommend placing the state on a staggered review period, such as two or more years. They commented, however, that if a state is found to be inadequate, PHMSA should recommend continuing with an annual review to assist the state in enhancing its excavation damage prevention program.

Michigan Consolidated Gas commented that considering the state has the funding and resources to administer its enforcement program, a periodic review is acceptable, but suggested that yearly is not necessary.

MidAmerican Energy commented that an annual review of a state's excavation damage prevention law enforcement program would be appropriate with the provision that a state should be allowed to petition PHMSA to show that its previously inadequate enforcement program has been upgraded so that Federal administrative enforcement is no longer required.

Response

PHMSA agrees that annual reviews of state excavation damage prevention law enforcement programs should include reviews of program effectiveness indicators and is proposing this in the NPRM. However, PHMSA believes it appropriate to include program adequacy as part of its annual review process, but does not propose to include additional evaluation of continuing effectiveness indicators.

Standards

API and AOPL commented that PHMSA should consider the establishment of minimum standards for critical elements of state one-call laws, such as, but not limited to, notification time, tolerance zones and white-lining (or otherwise denoting the area of intended proposed excavation).

EPPG and Panhandle Energy also noted that prior to an audit by Federal authorities of any state program, a clear and understood ''standard'' should be prepared that a state can be audited against and met. EPPG supports the ANPRM's annual audit proposal of state programs but is concerned that this effort could draw unnecessary resources away from PHMSA's other safety programs. Therefore, EPPG advocated a ''standard,'' which is understood by all parties that could be more quickly used as an audit tool during the annual audit.

Response

The criteria for review of state enforcement programs are proposed in this NPRM and PHMSA welcomes comment on these criteria. However, PHMSA is not proposing a model state one-call law or other audit standard in this rulemaking.

State Resources

APGA expressed concern that the review process may become very time consuming for both PHMSA and the states, which would have the unintended effect of diverting limited resources away from the excavation damage prevention effort. APGA

considers that there should be further discussion about exactly what this review would entail before a rule is proposed.

Michigan Consolidated Gas commented that PHMSA should consider when evaluating a state's enforcement program that this proposed process can be influenced by the ability of the state to carry out enforcement (i.e., state resources, funding, volume of complaints, etc.). Similarly, the Michigan PSC commented that PHMSA must be flexible depending upon the resources given to the state to provide for an adequate program.

Response

The state enforcement program review process should not be too time consuming or divert resources away from excavation damage prevention responsibilities. The review criteria and process in this proposed rule have been written to be as simple as possible to address this concern. However, PHMSA is seeking comment on this conclusion.

Resources can affect the ability of a state to meet its excavation damage prevention law enforcement responsibilities. However, PHMSA does not propose to assess state enforcement resources, but instead to assess state enforcement records. If state resources are insufficient to enforce the state excavation damage prevention law adequately, state enforcement records are likely to reflect the insufficiency.

C. Federal Requirements for Excavators

Section IV.C of the ANPRM sought comment on the establishment of the Federal requirements for excavators that PHMSA would be enforcing in a state that PHMSA has found to have an inadequate enforcement program. It noted that at a minimum the standards will reflect the words cited in the PIPES Act regarding requirements for excavators.

Section IV.C gave examples to which some commenters addressed specifically, including:

- Should the Federal requirements for excavators be limited to the minimum requirements reflected in the PIPES Act or should they be more detailed and extensive?
- Will implementing the 911 requirement cause any unintended consequences in practice?
- Are there suggested alternatives to these standards?

The ANPRM also suggested that the CGA Best Practices and API Recommended Practice 1166, Excavation Monitoring and Observation (November 2005), could be used to inform the development of such standards.

Federal Requirements

Several commenters, including AGA, API, AOPL, Michigan Consolidated Gas, and others, support establishing a Federal requirement for excavators. They noted that the minimum requirements in the PIPES Act and the U.S. Code are sufficient for establishing Federal requirements, and that keeping it simple is the most effective approach. API and AOPL commented that the proposed requirements should lead to greater pipeline safety by making excavators more aware of their one-call responsibilities and the consequences of failing to comply with state laws and regulations. AGA commented, however, that the ANPRM was unclear whether PHMSA intends to try and impose these standards on excavators that might include homeowners, land owners, private contractors, and other utilities.

AGC commented that if PHMSA deems a state's excavation damage prevention law enforcement program inadequate, the basic premises in the ANPRM are reasonable. AGC suggested that PHMSA should refer to the CGA Best Practices as a template for guidance standards in the absence of appropriate state standards until a determination of the adequacy of the state excavation damage prevention program is made.

Similarly, EPPG fully supports the development of a Federal requirement that PHMSA could use to determine if a state's excavation safety program is adequate but that PHMSA should not be the sole, or even primary, developer of this standard. A national consensus standard should be developed by all the various stakeholders, including Federal and state agency regulators, industry, the excavation community, members of the public, one-call organizations, and other excavation-affected parties.

GulfSafe commented that setting standards for excavators would bring some consistency to the excavation community, especially for those excavators who consistently work in multiple states. GulfSafe also considers it important that any prescriptive rule use the CGA Best Practices as a foundation for the rule to gain acceptance in the excavation community. The organization noted that the CGA Best Practices have long been a consensus based approach that has understood that one size doesn't fit all and has made allowances for geography and soil types as well as local practices. Best Practices are intended to be voluntary, not prescriptive, and there is evidence that they are working.

The APGA opposes establishment of Federal requirements for excavators and considers that PHMSA should defer to existing state laws where they prescribe excavation damage prevention requirements. APGA considers that creating a Federal requirement that would overrule state requirements only if the state is found not to be enforcing its excavation damage prevention law would create confusion in both the excavation and utility communities as to which requirements apply. APGA noted that only where a state has no standards for such activities should PHMSA apply Federal requirements. On the other hand, API and AOPL consider that while conditions vary from state-to-state and that ''one size does not fit all,'' PHMSA should establish minimum requirements through a notice and comment rulemaking process.

MidAmerican Energy Company commented that the minimum requirements presented in the ANPRM are an appropriate starting point, and that if experience reveals that additional or revised requirements are necessary, then revisions can be made based on the documented record. However, they noted that any additional or revised standards should consider that state excavation damage prevention laws pertain to more than just pipelines—they pertain to all types of underground facilities. It does not appear to be practical or prudent to approach this set of issues soley from a pipeline-only perspective, or to promote a ''one size fits all'' approach to underground facilities excavation damage prevention.

Missouri PSC, Paiute Pipeline, and Southwest Gas Corporation commented that Federal requirements limited to the minimum requirements reflected in the referenced Federal statute should be sufficient. However, Missouri PSC noted that Federal requirements should also refer to any state statutory provisions that are either more stringent or different in practice (such as damages being reported to the one-call center rather than the pipeline operator directly). EPPG and Panhandle Energy support the development of a template that PHMSA could use to determine if a state's excavation safety program is adequate. Panhandle considers that a national consensus standard or recommended practice should be developed by all the involved stakeholders, including Federal and state agency regulators, industry, the excavation community, members of the public, one-call organizations, and other excavation-affected parties. EPPG and Panhandle consider that a national consensus standard should address the issues mentioned in the ANPRM in

Section IV.C, at a minimum, but should also address many other issues including, among others:

- Expectations of individual state's programs; expectations of excavators, regardless of legal or contractual affiliation.
- Types of excavators covered by the standard (all excavators regardless of affiliation).
- Individual state's abilities to contest an annual Federal audit's findings.
- Physical excavation guidelines (locating, marking, communications, etc.).
- The role of one-call programs.
- Excavation damage reporting requirements.
- Description of excavator's responsibilities prior to and following any excavation, including any spill or damaging incident to the pipeline operator.
- Requirements to contact 911 if any release of product or natural gas occurs.
- Establishment of a mechanism to ensure the state receives reports of pipeline damage incidents in a timely manner.
- Use of ''emergency'' excavation processes.
- Excavation investigation requirements if pipeline damage occurs.
- Explicit state authority.
- Enforcement documentation requirements.
- Reference to other useful guidance documents, such as the Common Ground Alliance's work.
- Due process criteria for excavators if liability is found.

EPPG noted that some of these issues may not be suitable for a national consensus standard, and enforcement provisions are left out altogether since they are not suitable for a national consensus standard, but those not included in a standard could be incorporated within a future PHMSA ''state guide'' for excavation safety.

Michigan PSC commented that more detailed and extensive requirements are not necessary and may be in direct conflict with various states' laws. It also asked that ''excavator'' be defined. For example, will homeowners be subject to the Federal requirements?

NAPSR commented that PHMSA should not undermine state requirements with a second layer of excavator standards, but should defer to the individual states in such matters. They noted that the Federal law appears to define the expectations for excavators reasonably and provides a basis for enforcement. If PHMSA adopts regulations further defining what standards it believes an excavator should be held to, it risks creating two sets of standards, state and Federal, which excavators must follow. Due to the diversity of state requirements, the Federal requirements would undoubtedly contain inconsistencies and conflicts with the standards of at least some states.

Nicor commented that one aspect of the minimum standards that is inadequate involves the locating and marking of facilities for which ownership is unclear. During this period prior to completion, such facilities may be left unmarked after a call to the one-call system. As an example, Nicor noted that in a new subdivision, it is often unclear who has ownership of and responsibility for locating and marking sewer and water lines prior to completion, at which point the property owner or municipality takes ownership.

NUCA commented that the proposed Federal requirements effectively cover the primary responsibilities of the excavator, and are consistent with past DOT excavation damage prevention messages, such as the ''Dig Safely'' initiative of the 1990s. However, NUCA noted that utilization of ''location information'' is too vague for inclusion in a new Federal requirement. General information of underground pipeline facilities should never substitute for meeting all of the operator's locating and marking responsibilities.

Ohio PUC commented that requirements for pipeline operators and excavators should parallel, and PHMSA should consider providing guidance on how it intends to evaluate liability and enforcement if an excavator damages a pipeline system due to a pipeline owner/operator failing to mark underground lines or marking them incorrectly or inaccurately. Ohio PUC also commented that any Federal requirements should avoid specific requirements for marking standards that may conflict with reasonable and appropriate marking standards developed by individual states.

The PST commented that there are a number of issues that need to be addressed if PHMSA imposes Federal requirements on excavators when PHMSA deems a state to have an inadequate enforcement program. For example: (1) Will these standards be permanent or will excavators again be held to state standards once the state program is deemed adequate? (2) What happens if the state enforcement program is deemed inadequate but some of the state's standards or requirements are more stringent than the Federal government's? Will PHMSA impose its lesser standards? (3) If the standards revert to those of the state once the enforcement program is deemed adequate, it is conceivable that excavators would only be required to meet the Federal requirements for a short period of time (from one annual review to another). Should this happen, excavators are likely to become confused about their compliance responsibilities.

Southern California Gas and California Gas and Electric prefer that the standards for excavators for reporting damage should define ''damage'' in more detail, similarly to California Government Code 4216.4.(c). They noted that all damage, even coating or cathodic protection wire damage, can affect the integrity of the pipeline over time.

The three Texas pipeline associations commented that it is probably best if PHMSA adopts some set of Federal requirements for excavation damage prevention to be enforced in situations where a state program is determined to be inadequate. They noted that if the scope of a state agency's excavation damage prevention standards was not the source of the finding of inadequacy, it would be least disruptive to all aspects of industry for PHMSA to simply enforce the existing state standards. They further noted that this approach may cause some legal and practical issues for PHMSA to provide consistent enforcement. It could represent a significant challenge for PHMSA to educate its staff on the large variety of state standards that they would need to enforce.

USIC Locating Services' comments indicate that it is in favor of establishing standards for excavators with regard to: the use of a mandatory 72-hour notice requirement; limiting the scope of a ticket to 1,320 feet; use of a 24″ tolerance zone on either side of the buried facility; requiring white-marking (as opposed to just suggesting white-marking); emergency locate requests made by excavators; and strict penalties levied against excavators abusing emergency locate provisions.

The Wisconsin Transportation Builders Association (WTBA) commented that industry is concerned about the emphasis being placed solely on the excavator. They noted that while some requirements may be appropriate and helpful, they will nearly always create unintended consequences such as unnecessary cost and uncontrollable risk. According to the WTBA, there is rarely discussion regarding who is responsible for costs associated with unexpected delays to contractors. These costs are substantial and continue to affect the cost of public projects adversely.

Response

PHMSA proposes to apply Federal requirements to all excavators, with the exception of homeowners excavating with hand tools on their own property, in states PHMSA deems to have inadequate excavation damage prevention law enforcement programs. The term ''excavator'' is defined in this proposed rule. PHMSA cannot enforce state laws in the absence of Federal requirements because, to the extent state requirements go above and beyond the minimum Federal laws, PHMSA has no authority to enforce such requirements. Development of Federal requirements is, therefore, a prerequisite to Federal administrative enforcement. The standards proposed in this NPRM are designed to establish minimum requirements for excavators to avoid excavation damage to pipelines.

PHMSA does not propose to develop the Federal requirements through a consensus process, but rather through this rulemaking process. PHMSA used the PIPES Act to inform the development of the proposed Federal requirements.

This proposed rule does not refer to any state standards; PHMSA believes to do so could create an overly-prescriptive set of standards. Different states have different geographic and demographic conditions and an effective damage prevention program for one state may not necessarily work for another. However, PHMSA considers the proposed Federal regulations to be the minimal standard that is basic to any effective excavation damage prevention law enforcement program. Because state and Federal requirements will never be enforced simultaneously, the existence of a Federal requirement should not present any conflicts with existing state requirements for excavators. However, PHMSA is seeking comment on this issue. PHMSA does recognize that excavators should be informed of the Federal requirements in states where those standards will apply. To that end, PHMSA intends to continue to work with excavator trade associations, state agencies and one-call centers, the Common Ground Alliance, and other key excavation damage prevention stakeholders to communicate the requirements of the final rule and the adequacy status of each state as broadly as possible.

As we have stated previously, PHMSA's statutory enforcement authority pertains only to excavation damage prevention as it relates to pipelines. Because PHMSA has no jurisdiction over sewer and water facility operators, this proposed rule does not address those operators' responsibilities.

Requirements for pipeline operators regarding locating and marking their facilities are clearly defined in existing pipeline safety regulations (49 CFR Parts 190–199). PHMSA will continue to enforce existing Federal excavation damage prevention regulations applicable to pipeline operators if investigations reveal that pipeline operators fail to comply with those regulations. PHMSA does not propose to amend the standards currently applicable to pipeline operators in this rulemaking proceeding.

PHMSA considered the comments regarding one-call standards, but believes those types of standards would be overly-prescriptive and confusing for the purposes of this proposed rule. This proposed rulemaking does not impede any party's legal rights to pursue restitution of damages from any other party involved in a damage incident.

Implementing 911 Requirement

AGA commented that implementation of the 911 requirement can result in some unintended consequences that may actually cause behaviors and actions that are detrimental to pipeline safety. It noted that as a practice in responding to 911 calls being made, fire departments often bill their costs to the excavator and in some circumstances the natural gas utility. Very often, the excavator is a professional contractor. As a result, excavators are having second thoughts about dialing 911 when damage results in a leak, particularly on smaller diameter plastic pipe that is viewed as an ''easy'' repair for professional contractors who think they have the ability and the means to make an acceptable repair. Having unqualified personnel making repairs on natural gas lines can lead to catastrophic consequences.

AGA also noted that natural gas utilities try to foster a culture that encourages a contractor to notify the gas utility promptly when a pipe is dented or nicked, its coating scratched, or even when a tracer wire is cut or anode wire broken. The motivation for the utility is that it can respond and determine what repair actions are needed, to ensure the pipe will not fail or leak at some point in the future, and that the pipe can be located in response to future excavation activity. The utilities have developed relationships with contractors so that they trust they will not be billed in circumstances where the contractors are forthcoming and can demonstrate they have made a reasonable attempt to dig responsibly and follow one-call and state statutes.

AGA, Missouri PSC, NUCA, Southern California Gas, California Gas and Electric, and others expressed concern that the volume of calls resulting from this requirement may be unmanageable and could result in limited emergency response resources being used in situations that really do not necessitate an emergency response. AGA, Southern California Gas, and California Gas and Electric noted, for example, that as a result fire departments could have to respond to every excavation damage incident reported via 911, including breaks on small diameter service lines where the gas may be safely venting to the atmosphere and public safety is generally not threatened. The response of fire departments to potentially thousands of inconsequential excavation damages could compromise their ability to respond to other events that are actually life-threatening emergencies. Missouri PSC was aware of one major gas distribution operator that is having its practice of advising excavators to call 911 questioned by local emergency officials.

MidAmerican Energy Company, Paiute Pipeline and Southwest Gas Corporation commented that the 911 requirement should not be mandated for all releases of hazardous materials. If a violation of the excavation damage prevention laws results in a public safety emergency that may endanger life or cause serious bodily harm or damage to property, then, as for any public safety emergency, the use of the 911 telephone notification system would be appropriate. Otherwise, calling 911 should not be necessary.

Regarding emergency responders, NUCA commented that the proposed rule should address the role of first responders in situations where the escape of flammable, toxic, or corrosive product is released as a result of damage to an underground pipeline. NUCA noted that if a 911 call is made, the responders must be trained in how to respond to the situation effectively. NUCA noted that traditionally, representatives from the company that owns the gas or hazardous liquid pipeline are best educated and equipped to handle these situations.

Nicor commented that the 911 requirement is most appropriate when someone other than the pipeline owner or operator damages the pipeline. Operators who accidentally damage their own facilities should have the flexibility of calling 911 if they need further assistance in making an area safe. As a basis, Nicor cited that pipeline operators are also sometimes excavators and that provisions should be developed for instances where an

operator's excavation crew accidentally damages its own facility and that results in a release of natural gas. The crews are trained and qualified to handle emergency response and to make repairs. Often times, the release of gas is secured very quickly and should not warrant calling 911. Additionally, after responding to a 911 call involving excavator damage and a release of natural gas from a pipeline, some fire departments have sent invoices to natural gas operators for costs incurred for hazmat response. Nicor noted that the inability of an operator to exercise discretion in calling 911 may lead to strained relationships between natural gas pipeline operators and fire departments.

NUCA, Paiute Pipeline and Southwest Gas Corporation commented that PHMSA should specify that excavators must call 911 if the ''damage results in the escape of any flammable, toxic, or corrosive gas or liquid,'' as specified in the PIPES Act, instead of trying to include all of these under the umbrella of ''hazardous products.'' They noted that excavators are not emergency responders, and the regulation should be as specific as possible to distinguish between natural gas and other gases or liquids to identify what products are considered ''hazardous'' by PHMSA.

Michigan PSC noted that implementing the 911 requirement will not cause any unintended consequences in practice. Paiute and Southwest Gas Corporation also commented that all API RP 1162 related communications and activities should promote the requirement of calling 911 if a pipeline damage incident causes a release of product. They also noted that although they cannot reference any empirical evidence that identifies any unintended consequences of implementing the 911 requirement, as excavators become better educated on this requirement, calls to emergency response agencies will likely increase.

Response

PHMSA considered all of the comments pertaining to implementing the 911 requirement. The PIPES Act requires excavators to promptly call the 911 emergency telephone number if a damage results in the escape of any flammable, toxic, or corrosive gas or liquid that may endanger life or cause serious bodily harm or damage to property. PHMSA understands that excavators and utility operators are sometimes required to reimburse 911 centers for the cost of dispatching emergency response personnel to a damage site. Therefore, PHMSA is proposing that excavators must call 911 in these instances, but may exercise discretion as to whether to request that the 911 operator dispatch emergency response personnel to the damage site. PHMSA welcomes additional comments on the 911 issue.

Reference to API RP 1166

AGA commented that API RP 1166 does not apply in developing standards for excavators in that it does not apply to natural gas distribution operators. AGA noted that this standard is a useful resource for gas transmission pipeline operators, but that the decision to monitor and possibly observe any excavation activity is at the discretion of the pipeline operator.

Several commenters noted that the CGA Best Practices and API Recommended Practice 1166 could be used to inform the development of such standards, but that the minimum requirements stated in 49 U.S.C. 60114 are appropriate. Paiute Pipeline and Southwest Gas Corporation commented that PHMSA should refrain from citing best practices from any organization, publication or individual entity as regulation.

Response

PHMSA is not proposing to use API RP 1166 to inform the development of the Federal requirement for enforcement and believes the requirements stated in the PIPES Act are appropriate.

D. Adjudication Process

Section IV.D of the ANPRM sought comment on the adjudication process that PHMSA would use if it cited an excavator for failure to comply with Federal requirements established by this rulemaking process in a state where PHMSA has deemed the enforcement program inadequate. It noted that at a minimum, an excavator that allegedly violated the applicable requirement would have the right to: receive written notice of the allegations, including a description of the factual evidence supporting the allegations; file a written response to the allegations; request a hearing; be represented by counsel if the excavator chooses; examine the evidence; submit relevant information and call witnesses on his or her behalf; and otherwise contest the allegations of violation. Hearings would likely be held at one of PHMSA's five regional offices or via teleconference. The hearing officer would be an attorney from PHMSA's Office of Chief Counsel. The excavator would also likely have the opportunity to petition for reconsideration of the agency's administrative decision and judicial review of final agency action would be available to the same extent it is available to a pipeline operator.

Commenters were invited to submit their views on this process or suggest alternatives. For example:

- Is the process too formal in the sense that excavators contesting a citation would have to prepare a written response for the record and potentially appear before a hearing officer?
- Is the process not formal enough in the sense that it does not provide for formal rules of evidence, transcriptions, or discovery? Or does this process strike the right balance by being efficient and at the same time providing enough formality that excavators feel the process is fair and their due process rights are maintained?
- How should the civil penalty criteria found in 49 U.S.C. 60122(b) apply to excavators?

All Parties

AGC and NUCA commented that the adjudication process outlined by PHMSA seems fair; however, PHMSA must carefully consider that if an excavator is not found to be at fault, excavators must maintain the right to pursue damages for downtime and the ability to recover legal expenses. Allowing excavators all rights to due process should be recognized, and the same privileges afforded to others subject to Federal administrative enforcement (i.e., pipeline operators) should be afforded to excavators. NUCA noted that ensuring excavators the right to pursue damages (i.e., downtime expenses), must be considered when establishing a new Federal adjudication process. NUCA also noted that excavators regularly lose significant revenue in downtime expenses after having to shut down projects because of underground facilities that were either not marked or marked inaccurately. According to NUCA, this is an enormous financial problem facing professional excavators, and one that must be addressed in the PHMSA regulation. AGC agreed that hearings should be open to the public and conducted at one of PHMSA's five regional offices or an alternative location accessible to all parties.

MidAmerican Energy Company also noted that participation in any process should not preclude the ability to pursue further legal remedies a participant may determine to be appropriate.

USIC Locating Services commented that whatever process is established should provide interested parties a right of intervention so that the resulting record accurately reflects the positions of all affected parties.

Nicor noted that excavators who are also operators of pipelines regulated under 49 CFR Part 192 already fall under the enforcement requirements of Subpart B in 49 CFR Part 190. If PHMSA determines that it must take enforcement action against other excavators the same process could be followed.

Response

PHMSA agrees that an excavator must maintain the right to pursue damages for downtime and the ability to recover legal expenses if the excavator is not found to be at fault in an excavation damage incident investigation; this proposed rule does not infringe upon those rights. In addition, this proposed rule is intended to establish adjudication procedures that protect the rights of excavators to due process. PHMSA also believes that interested parties should have the opportunity to attend and observe hearings and the opportunity to request intervention status within the PHMSA adjudication process so that the resulting record accurately reflects the position of all affected parties.

Appeals

AGC commented that the excavator should have the opportunity to petition for reconsideration of PHMSA's administrative decision, and judicial review of final agency action should be available to the same extent it is available to a pipeline operator. Similarly, the three Texas pipeline associations commented that there should be an appeals process for a party to challenge the outcome of the hearing.

Response

The process for an excavator to request reconsideration or appeal a finding of violation by PHMSA is provided in this proposed rule.

Arbitration and Advisory Committees

Spectra Energy commented that each state should have a clearly defined process for arbitration or review of enforcement actions for violations of excavation damage prevention regulations. Spectra suggested that one possible method is to have an independent panel that would review and recommend final enforcement action. The panel should include members that represent the one-call center, pipeline operators and the excavator community.

Response

As noted above, committees composed of representatives of all excavation damage prevention stakeholders to advise enforcement agencies are a proven method of ensuring fair and balanced excavation damage prevention law enforcement. Such may be the case with arbitration committees. While PHMSA does not propose to use an advisory committee for Federal administrative enforcement proceedings, PHMSA does not object to a state's use of an advisory committee in the state enforcement process.

Civil Penalties

AGA noted that PHMSA must distinguish between levying any fines on entities or persons engaged in excavation damage prevention activities, as opposed to the fines and enforcement actions PHMSA traditionally takes against pipeline operators under 49 U.S.C. 60122(a). Similarly, Paiute Pipeline and Southwest Gas Corporation commented that the penalty criteria found in 49 U.S.C. 60122(b) are excessive to the average excavator and to the average excavation damage.

Paiute Pipeline, Southwest Gas Corporation, and Missouri PSC commented that PHMSA should work with the individual states on invoking civil penalties in their individual laws. Missouri PSC agreed, commenting that unless the civil penalty provisions existing in a state's law are the reason a state's enforcement program is deemed inadequate, the state's penalties should be applied rather than the Federal penalties.

Paiute Pipeline and Southwest Gas Corporation commented that the adjudication process outlined is generally adequate, but to make the process fair and efficient a step should be added allowing an alleged violator to accept PHMSA's recommendation for a reduced penalty and agreement to take some remedial action such as attending an educational seminar on underground excavation damage prevention and pipeline safety.

WTBA commented that civil penalties should not apply to excavators unless there was a truly unlawful act of negligence.

MidAmerican Energy Company agreed that the penalty criteria found in 49 U.S.C. 60122(b) are reasonable to consider in evaluating the amount of a civil penalty to assess for a violation of the one-call provisions. MidAmerican also questions whether the violator's (1) ability to pay and (2) any effect on the ability of the violator to continue doing business are necessarily relevant criteria in all cases. MidAmerican noted that the remainders of the penalty criteria appear to provide the flexibility for the agency to tailor the assessment of a civil penalty to the specific circumstances of a particular violation. It considers that ''an egregious violation or a pattern of violations evidencing an intentional or negligent disregard of the one-call provisions could present a serious threat to the public safety. In those, hopefully unusual, cases, the dangers presented by an excavator continuing to exhibit such a callous disregard for the public safety should take precedence over the effect that the assessment of a civil penalty might have on the violator's ability to pay or to continue doing business. The Illinois administrative regulations also contain these two penalty criteria.''

The three Texas pipeline associations commented that regardless of process, any person or entity found guilty of violating the Federal requirements should face financial penalties that provide incentives for future compliance and reflect the seriousness of the violation.

Response

PHMSA proposes to use the civil penalty provisions described in 49 U.S.C. 60101 et seq. as a basis for civil penalties levied against excavators subject to this proposed rule. PHMSA believes this approach is preferable to establishing alternate civil penalty provisions specific to this proposed rule. PHMSA proposes to take into account a violator's ability to pay, ability to continue to do business, and the seriousness of the violation when determining appropriate civil penalties. PHMSA seeks comment on the proposed use of civil penalties.

Formality

AGA, AGC, MidAmerican Energy, and Missouri PSC agree that the adjudication process noted in the ANPRM is not too formal. API, AOPL, and NUCA all support the process as described. API and AOPL commented that the adjudication should allow the hearing officer sufficient flexibility to conduct the proceeding promptly and efficiently, such that decisions may be rendered without undue delay.

Panhandle Energy and EPPG both suggested that the processes defined in 49 CFR Part 190 be followed. Spectra Energy Transmission noted that when an enforcement action relating to violation of excavation damage prevention regulations is initiated, the excavator and pipeline operator should have the opportunity for a hearing.

AGA commented that the adjudication process must be a formal one, where the excavator is able to defend his or her actions, explaining how and why the damage occurred, and to contest an alleged violation. AGA and

AGC both noted that the adjudication process must provide for formal rules of evidence, transcriptions, and discovery, to conduct fair proceedings that ensure all parties' rights to due process are maintained. AGC commented that a formal adjudication process should be adopted to preserve the rights of an excavator charged with a violation. The process should include the right(s) to: receive written notice of the allegations, including a description of the evidence the allegations are based on; allow for a submission in response to the allegations; and, allow for an informal hearing with counsel if necessary. AGC also noted that the adjudication procedure should thoroughly examine the evidence and allow for submission of relevant information and testimony from witnesses to adjudicate the allegation of violation thoroughly.

MidAmerican Energy commented that while the proposed process strikes the appropriate balance, strict adherence to the formal rules of evidence or extensive discovery is not necessary or appropriate. MidAmerican also suggested that transcripts could be optional at the expense of the state or requesting party.

Paiute Pipeline and Southwest Gas Corporation commented that the adjudication process should remain at the state level, and not a formal Federal process. They noted that excavators would appreciate the efficiency of maintaining the adjudication process at the state level, and that if damages are involved, there is always the claim/court system for excavators, operators and states with enforcement authority for billable and damage awards. They consider that PHMSA should only step in when the entire program is deemed inadequate, and should not mandate enforcement at the Federal level but rather partner with the states to enhance the enforcement at the state or local level. They consider that PHMSA's support of states and their excavation damage prevention programs will ultimately provide the excavation damage prevention authority and enforcement PHMSA is seeking with the proposed rulemaking procedures. They commented that PHMSA may want to include a provision for the excavating community to submit a request for Federal involvement if they feel the process is unfair and their rights are not being maintained at the state level.

WTBA commented that the proposed process appears to be too formal and does not sound like an ''informal hearing.'' It noted that there must be an opportunity for a true informal hearing, at a location near the project, to discuss actual facts of the incident. It also commented that an informal hearing must involve individuals that are knowledgeable of construction and design that are capable of determining whether reasonable efforts were made by all parties involved.

APGA agrees that enforcement proceedings should be conducted at the PHMSA regional office level rather than headquarters. APGA also noted that Virginia has an excavation damage prevention law enforcement program that involves a panel comprised of excavators, facility owners and others to advise on the appropriate level of penalties, if any. APGA suggests that PHMSA consider whether a similar system could work for any Federal administrative enforcement actions.

Response

The majority of commenters support PHMSA's approach for the adjudication process proposed in this NPRM and that the process is sufficiently formal to protect the rights of excavators to due process, but not so formal as to be overly burdensome for alleged violators.

PHMSA is not proposing to use an advisory panel modeled after Virginia's excavation damage prevention program, but instead to follow the process described in this proposed rule.

E. Existing Requirements Applicable to Owners and Operators of Pipeline Facilities

Section IV.E of the ANPRM invited commenters to submit their feedback and comments on the adequacy of PHMSA's existing requirements for pipeline operators to participate in one-call organizations, respond to dig tickets, and perform their locating and marking responsibilities. Under existing pipeline safety regulations 49 CFR 192.614 for gas pipelines and 49 CFR 195.442 for hazardous liquid pipelines, operators are required to have written excavation damage prevention programs that require, in part, that the operator provide for marking its pipelines in the area of an excavation for which the excavator has submitted a locate request.

Comments could address, for example, whether PHMSA should consider making the existing regulatory requirements more detailed and explicit in terms of:

- The amount of time for responding to locate requests;
- The accuracy of facility locating and marking; or
- Making operator personnel available to consult with excavators following receipt of an excavation notification.

Federal One-Call

No commenters that addressed the existing pipeline safety damage prevention regulations, 49 CFR 192.614 and 195.442, considered these requirements to be inadequate, nor did they believe that PHMSA needed to make these requirements more detailed or specific. Several commented that to do otherwise would lead to confusion where the Federal requirements were different from state standards.

Commenters suggested that PHMSA should enforce states' laws and that states already have the ability to establish more detailed regulations on pipeline operators for facility locating and marking. AGA considers that it is not logical for PHMSA to suggest that Federal requirements addressing one-call types of issues can be imposed at the national level. They consider that adding more details at the Federal level will be problematic since it may conflict with existing state regulations and cannot take unique state laws into consideration. AGA also commented that no language in the Federal regulations is necessary regarding the ability of excavators to request a consultation or job-site meeting with underground facility operators, since most one-call centers already have a procedure for this.

AGC suggested that PHMSA encourage state regulatory authorities to equally enforce state laws applicable to underground facility owners and operators who fail to respond to a location request or fail to take reasonable steps, in response to such a request. AGC also noted that state enforcement programs should consider the costs involved for excavators when they incur downtime due to a violation by an operator or a locator.

Nicor commented that state authorities must make enforcement of owner/operator requirements a higher priority and should consider the CGA Best Practices.

API and AOPL commented that pipeline operators should be held to the same standards as other facility owners and excavators, and should be held accountable to respond to locate requests in a timely and accurate manner. They noted, however, that they do support regulations, such as those in California (CA Govt. Code Section 4216–4216.9), that impose more explicit and additional requirements for both the owner and the excavator when excavating in close proximity to high priority, subsurface installations.

GulfSafe commented that offshore operators are exempt from being members of a one-call system. It noted

that this was an appropriate exemption at the time it was written but may need revisiting as technology has progressed over the past two decades to be a more practicable solution to prevent damages offshore. GulfSafe also suggested that this is the suitable time to address the enforcement issue that goes along with this exemption, since there are large differences in state laws regarding offshore pipelines and enforcement may fall to Federal agencies by default.

Ancillary to this concern, Michigan Consolidated Gas commented that PHMSA consider the excavator's ability to call in an unreasonable number of tickets per day causing resource allocation issues for locate personal. Also, Michigan PSC recommended that all meetings between an excavator and operator be documented and digital pictures be taken at job-sites prior to excavation activity.

Response

PHMSA does not have the authority to enforce state laws. PHMSA believes that specifying the number of tickets per day an excavator can create, as well as how meetings between excavators and operators should be documented as part of the Federal requirement is not appropriate given the ''backstop'' (i.e., Federal enforcement only in the absence of adequate state enforcement) nature and use of the Federal authority. In addition, PHMSA believes that addressing the exemption for offshore operators is outside the scope of this NPRM.

V. Regulatory Analysis and Notices

The proposed rule would amend the Federal Pipeline Safety Regulations (49 CFR Parts 190–199) to establish criteria and procedures PHMSA will use to determine the adequacy of state pipeline excavation damage prevention law enforcement program.

Statutory/Legal Authority for This Rulemaking

PHMSA's general authority to publish this proposed rulemaking and prescribe pipeline safety regulations is codified at 49 U.S.C. 60101 *et seq.* Section 2(a) of the PIPES Act (Pub. L. 109–468) authorizes the Secretary of Transportation to enforce pipeline damage prevention requirements against persons who engage in excavation activity in violation of such requirements provided that, through a proceeding established by rulemaking, the Secretary has determined that the relevant state's enforcement is inadequate to protect safety.

Executive Order 12866, Executive Order 13563, and DOT Policies and Procedures

This proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and 13563, therefore, was reviewed by the Office of Management and Budget. This proposed rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Orders 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.''

Because excavation damage is one of the major causes of pipeline incidents, the expected benefits of this rulemaking action are an increased deterrent to violations of one-call requirements and the attendant reduction in pipeline incidents and accidents caused by excavation damage. Failure to use an available one-call system is a known cause of pipeline accidents.

A regulatory evaluation containing a statement of the purpose and need for this rulemaking and an analysis of the costs and benefits is available in the docket.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 603, PHMSA has made an initial determination that the proposed rule will not have a significant economic impact on a substantial number of small entities. This determination is based on the minimal cost to excavators to call the one-call center. In addition, the proposed rule is procedural in nature and its purpose is to set forth an administrative enforcement process for actions that are already required. The proposed rule would appear to have no material effect on the costs or burdens of compliance for regulated entities, regardless of size. Thus, the marginal cost, if any, that would be imposed by the rule on regulated entities, including small entities, would not be significant. Based on the facts available about the expected impact of this rulemaking, I certify that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities. PHMSA invites public comments on this certification.

Since the Regulatory Flexibility Act does not require an initial (or final) regulatory flexibility analysis when a rule will not have a significant economic impact on a substantial number of small entities, such an analysis is not necessary for this proposed rule. Nonetheless, PHMSA invites public comment on the proposed rule's effect on the costs, profitability, competitiveness of, and employment in small entities to ensure that no significant economic impact on a substantial number of small entities would be overlooked. The following information is provided to assist in such comment:

Description of the small entities to which the proposed rule will apply.

In general, the enforcement process set forth in the proposed rule will potentially apply to any person conducting excavation activity in the vicinity of a pipeline who fails to call the one-call center or otherwise violates applicable requirements. The rule does not apply to homeowners excavating with hand tools on their own property. A precise estimate of the number of small entities is not currently feasible because Federal administrative enforcement will only be considered in states that do not have an adequate enforcement program and determinations on state programs turn on a number of factors that will require a factual analysis on a case-by-case basis. PHMSA seeks any information or comment on these issues, as noted below.

Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

This proposed rule imposes no additional reporting costs to businesses, including small businesses. The proposed rule is procedural in nature and its purpose is to set forth an administrative enforcement process for actions that are already required. The costs impacts associated with this proposed rulemaking would be imposed on Federal and state governments.

Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule.

PHMSA is unaware of any duplicative, overlapping, or conflicting Federal rules. As noted below, PHMSA seeks comments and information about any such rules, as well as any industry

rules or policies that would conflict with the requirements of the proposed rule.

Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

PHMSA seeks comments and information about any alternatives such as: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) any exemption from coverage of the rule, or any part thereof, for such small entities.

Executive Order 13175

PHMSA has analyzed this proposed rule according to the principles and criteria in Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments.'' Because this proposed rule would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

Pursuant to 5 CFR 1320.8(d), PHMSA is required to provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests. PHMSA estimates that the proposals in this rulemaking will cause an increase to the currently approved information collection titled ''Gas Pipeline Safety Program Certification and Hazardous Liquid Pipeline Safety Program Certification'' identified under Office of Management and Budget (OMB) Control Number 2137–0584. Based on the proposals in this rule, PHMSA estimates a 20% increase to states with gas pipeline safety program certifications/agreements. PHMSA estimates the increase at 12 hours per respondent for a total increase of 612 hour (12 hrs*51 respondents). As a result, PHMSA will submit an information collection revision request to OMB for approval based on the requirements in this proposed rule. The information collection is contained in the pipeline safety regulations, 49 CFR Parts 190–199. The following information is provided for that information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. The information collection burden for the following information collection will be revised as follows:

Title: Gas Pipeline Safety Program Certification and Hazardous Liquid Pipeline Safety Program Certification.

OMB Control Number: 2137–0584.

Current Expiration Date: 6/30/2012.

Abstract: A state must submit an annual certification to assume responsibility for regulating intrastate pipelines, and certain records must be maintained to demonstrate that the state is ensuring satisfactory compliance with the pipeline safety regulations. PHMSA uses that information to evaluate a state's eligibility for Federal grants.

Affected Public: State and local governments.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 67.

Total Annual Burden Hours: 4,532 (this estimate includes an increase of 612 hours).

Frequency of Collection: Annually and occasionally at states' discretion.

Requests for a copy of this information collection should be directed to Cameron Satterthwaite, Office of Pipeline Safety (PHP–30), Pipeline Hazardous Materials Safety Administration (PHMSA), 2nd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone (202) 366–4595.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Send comments directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for the Department of Transportation, 725 17th Street NW., Washington, DC 20503. Comments should be submitted on or prior to June 1, 2012.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $141 million, adjusted for inflation, or more in any one year to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the proposed rulemaking.

National Environmental Policy Act

PHMSA analyzed this proposed rule in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and DOT Order 5610.1C, and has preliminarily determined that this action will not significantly affect the quality of the human environment. A preliminary environmental assessment of this rulemaking is available in the docket and PHMSA invites comment on environmental impacts of this rule, if any.

Executive Order 13132

PHMSA has analyzed this proposed rule according to the principles and criteria of Executive Order 13132 (''Federalism''). A rule has implications for federalism under Executive Order 13132 if it has a substantial direct effect on state or local governments, on the relationship between the national government and the states, or on the distribution of powers and responsibilities among the various levels of government.

The Federal pipeline safety statutes in 49 U.S.C. 60101, et seq., create a strong Federal-state partnership for ensuring the safety of the Nation's interstate and intrastate pipelines. That partnership permits states to regulate intrastate pipelines after they certify to PHMSA, among other things, that they have and are enforcing standards at least as stringent as the Federal requirements, and are promoting a damage prevention program. PHMSA provides Federal grants to states to cover a large portion of their pipeline safety program expenses, and PHMSA also makes grants available to assist in improving the overall quality and effectiveness of their damage prevention programs.

In recognition of the value of this close partnership, PHMSA has made and continues to make every effort to ensure that our state partners have the

opportunity to provide input on this rulemaking. For example, at the ANPRM stage, PHMSA sought advice from the National Association of State Pipeline Safety Representatives (NAPSR) and offered NAPSR officials the opportunity to meet with PHMSA and discuss issues of concern to the states. As a result of these consultation efforts with state officials and their comments on the ANPRM, PHMSA became aware of state concerns regarding the rigorousness of the criteria for program effectiveness. PHMSA has taken these concerns into account in developing the proposed criteria in the NPRM. State and local governments will be able to raise any other federalism issues during the comment period for this NPRM and we invite state and local officials with an interest in this rulemaking to comment on any impacts to their governments.

Under the proposed rule, Federal administrative enforcement against an excavator that violates damage prevention requirements would be taken only in the demonstrable absence of enforcement by a state authority. Additionally, the proposed rule would establish a framework for evaluating state programs individually so that the exercise of Federal administrative enforcement in one state has no effect on the ability of all other states to continue to exercise state enforcement authority. This proposed rule would not preempt state law in the state where the violation occurred, or any other state, but would authorize Federal enforcement in the limited instance explained above. Finally, a state that establishes an effective damage prevention enforcement program has the ability to be recognized by PHMSA as having such a program.

For the reasons discussed above, and based on the results of our consultations with the states, PHMSA has concluded the proposed rule will not have a substantial direct effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. In addition, this proposed rule does not impose substantial direct compliance costs on state and local governments. Accordingly, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

This proposed rule is not a ''significant energy action'' under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this proposed rule as a significant energy action.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (70 FR 19477) or visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 196

Administrative practice and procedure; Pipeline safety; Reporting and recordkeeping requirements.

49 CFR Part 198

Grant programs-transportation; Pipeline safety; Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, PHMSA proposes to amend 49 CFR Subchapter D as follows:

1. Part 196 is added to read as follows:

PART 196—PROTECTION OF UNDERGROUND PIPELINES FROM EXCAVATION ACTIVITY

Subpart A—General

Sec.

196.1 What is the purpose and scope of this part?
196.3 Definitions.

Subpart B—One-Call Damage Prevention Requirements

Sec.

196.101 What is the purpose and scope of this subpart?
196.103 What must an excavator do to protect underground pipelines from excavation-related damage?
196.105 Are there any exceptions to the requirement to use one-call before digging?
196.107 What must an excavator do if a pipeline is damaged by excavation activity?
196.109 What must an excavator do if damage to a pipeline from excavation activity causes a leak where product is released from the pipeline?
196.111 What if a pipeline operator fails to respond to a locate request or fails to accurately locate and mark its pipeline?

Subpart C—Administrative Enforcement Process

Sec.

196.201 What is the purpose and scope of this subpart?
196.203 What is the administrative process PHMSA will use to conduct enforcement proceedings for alleged violations of excavation damage prevention requirements?
196.205 Can PHMSA assess administrative civil penalties for violations?
196.207 What are the maximum administrative civil penalties for violations?
196.209 May other civil enforcement actions be taken?
196.211 May criminal penalties be imposed?

Authority: 49 U.S.C. 60101 *et seq.*

Subpart A—General

§ 196.1 What is the purpose and scope of this part?

This part prescribes the minimum requirements that excavators must follow to protect underground pipelines from excavation-related damage. It also establishes an enforcement process for violations of these requirements.

§ 196.3 Definitions.

Damage or *excavation damage* means any impact that results in the need to repair or replace a pipeline due to a weakening, or the partial or complete destruction, of the pipeline, including, but not limited to, the pipe, its protective coating, lateral support, cathodic protection or the housing for the line device or facility.

Excavation means any operation using non-mechanical or mechanical equipment or explosives used in the movement of earth, rock or other material below existing grade. This includes, but is not limited to, augering, blasting, boring, demolishing, digging, ditching, dredging, drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling. This does not include homeowners excavating on their own property with hand tools.

Excavator means any person or legal entity, public or private, proposing to or engaging in excavation.

One-call means a notification system through which a person can notify pipeline operators of planned excavation to facilitate the locating and marking of any pipelines in the excavation area.

Pipeline means all parts of those physical facilities through which gas, carbon dioxide, or a hazardous liquid moves in transportation, including, but not limited to, pipe, valves, and other appurtenance attached or connected to pipe, pumping units, compressor units, metering stations, regulator stations, delivery stations, holders, fabricated assemblies, and breakout tanks.

Subpart B—One-Call Damage Prevention Requirements

§ 196.101 What is the purpose and scope of this subpart?

This subpart prescribes the minimum requirements that excavators must follow to protect underground pipelines from excavation-related damage.

§ 196.103 What must an excavator do to protect underground pipelines from excavation-related damage?

Prior to commencing excavation activity where an underground gas or hazardous liquid pipeline may be present, the excavator must:

(a) Use an available one-call system before excavating to notify operators of underground pipeline facilities of the timing and location of the intended excavation;

(b) If underground pipelines exist in the area, wait for the pipeline operator to arrive at the excavation site and establish and mark the location of its underground pipeline facilities before excavating;

(c) Excavate with proper regard for the marked location of pipelines an operator has established by respecting the markings and taking all practicable steps to prevent excavation damage to the pipeline; and

(d) Make additional use of one-call as necessary to obtain locating and marking before excavating if additional excavations will be conducted at other locations.

§ 196.105 Are there any exceptions to the requirement to use one-call before digging?

Homeowners using only hand tools, rather than mechanized excavating equipment, on their own property are not required to use a one-call prior to digging.

§ 196.107 What must an excavator do if a pipeline is damaged by excavation activity?

If a pipeline is damaged in any way by excavation activity, the excavator must report such damage to the pipeline operator, whether or not a leak occurs, at the earliest practicable moment following discovery of the damage.

§ 196.109 What must an excavator do if damage to a pipeline from excavation activity causes a leak where product is released from the pipeline?

If damage to a pipeline from excavation activity causes the release of any flammable, toxic, or corrosive gas or liquid from the pipeline that may endanger life or cause serious bodily harm or damage to property or the environment, the excavator must immediately report the release of hazardous products to appropriate emergency response authorities by calling 911. Upon calling the 911 emergency telephone number, the excavator may exercise discretion as to whether to request emergency response personnel be dispatched to the damage site.

§ 196.111 What if a pipeline operator fails to respond to a locate request or fails to accurately locate and mark its pipeline?

PHMSA may enforce existing requirements applicable to pipeline operators, including those specified in 49 CFR 192.614 and 195.442 and 49 U.S.C. 60114 if a pipeline operator fails to respond to a locate request or fails to accurately locate and mark its pipeline. The limitation in § 60114(f) does not apply to enforcement taken against pipeline operators and excavators working for pipeline operators.

Subpart C—Enforcement

§ 196.201 What is the purpose and scope of this subpart?

This subpart describes the enforcement authority and sanctions exercised by the Associate Administrator, OPS for achieving and maintaining pipeline safety under this Part. It also prescribes the procedures governing the exercise of that authority and the imposition of those sanctions.

§ 196.203 What is the administrative process PHMSA will use to conduct enforcement proceedings for alleged violations of excavation damage prevention requirements?

PHMSA will use the existing adjudication process for alleged pipeline safety violations set forth in 49 CFR Part 190, Subpart B. This process provides for notification that a probable violation has been committed, a 30-day period to respond including the opportunity to request an administrative hearing, the issuance of a final order, and the opportunity to petition for reconsideration.

§ 196.205 Can PHMSA assess administrative civil penalties for violations?

Yes. When the Associate Administrator, OPS has reason to believe that a person has violated any provision of the 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder, including a violation of excavation damage prevention requirements under this Part and 49 U.S.C. 60114(d) in a state with an excavation damage prevention law enforcement program PHMSA has deemed inadequate under 49 CFR Part 198, Subpart D, PHMSA may conduct a proceeding to determine the nature and extent of the violation and to assess a civil penalty.

§ 196.207 What are the maximum administrative civil penalties for violations?

The maximum administrative civil penalties that may be imposed are specified in 49 U.S.C. § 60122.

§ 196.209 May other civil enforcement actions be taken?

Whenever the Associate Administrator, OPS has reason to believe that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 *et seq.,* or any regulations issued thereunder, PHMSA, or the person to whom the authority has been delegated, may request the Attorney General to bring an action in the appropriate U.S. District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, civil penalties, and punitive damages as provided under 49 U.S.C. 60120.

§ 196.211 May criminal penalties be imposed for violations?

Yes. Criminal penalties may be imposed as specified in 49 U.S.C. 60123.

PART 198—REGULATIONS FOR GRANTS TO AID STATE PIPELINE SAFETY PROGRAMS

2. The authority citation for part 198 is amended to read as follows:

Authority: 49 U.S.C. 60101 *et seq.;* 49 U.S.C. 6101 *et seq.;* 49 CFR 1.53.

3. 49 CFR Part 198 is amended by adding a new Subpart D to read as follows:

Subpart D—State Damage Prevention Enforcement Programs

Sec.

198.51 What is the purpose and scope of this subpart?
198.53 When and how will PHMSA evaluate state damage prevention enforcement programs?
198.55 What criteria will PHMSA use in evaluating the effectiveness of state damage prevention enforcement programs?
198.57 What is the process PHMSA will use to notify a state that its damage prevention enforcement program appears to be inadequate?
198.59 How may a state respond to a notice of inadequacy?
198.61 How is a state notified of PHMSA's final decision?
198.63 How may a state with an inadequate damage prevention law enforcement program seek reconsideration by PHMSA?

Subpart D— State Damage Prevention Enforcement Programs

§ 198.51 What is the purpose and scope of this subpart?

This subpart establishes standards for effective state damage prevention enforcement programs and prescribes the administrative procedures available to a state that elects to contest a notice of inadequacy.

§ 198.53 When and how will PHMSA evaluate state excavation damage prevention law enforcement programs?

PHMSA conducts annual program evaluations and certification reviews of state pipeline safety programs. PHMSA will also conduct annual reviews of state excavation damage prevention law enforcement programs. PHMSA will use the criteria described in § 198.55 as the basis for the reviews, utilizing information obtained from any state agency or office with a role in the state's excavation damage prevention law enforcement program. If PHMSA finds a state's enforcement program inadequate, PHMSA may take immediate enforcement against excavators in that state. The state will have five years from the date of the finding to make program improvements that meet PHMSA's criteria for minimum adequacy. A state that fails to establish an adequate enforcement program in accordance with 49 CFR 198.55 within five years of the finding of inadequacy may be subject to reduced grant funding established under 49 U.S.C. 60107. The amount of the reduction will be determined using the same process PHMSA currently uses to distribute the grant funding; PHMSA will factor the findings from the annual review of the excavation damage prevention enforcement program into the 49 U.S.C. 60107 grant funding distribution to state pipeline safety programs. The amount of the reduction in 49 U.S.C. 60107 grant funding shall not exceed 10% of prior year funding. If a state fails to implement an adequate enforcement program within five years of a finding of inadequacy, the Governor of that state may petition the Administrator of PHMSA, in writing, for a temporary waiver of the penalty, provided the petition includes a clear plan of action and timeline for achieving program adequacy.

§ 198.55 What criteria will PHMSA use in evaluating the effectiveness of state damage prevention enforcement programs?

(a) PHMSA will use the following criteria to evaluate the effectiveness of a state excavation damage prevention enforcement program:

(1) Does the state have the authority to enforce its state excavation damage prevention law through civil penalties?

(2) Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?

(3) Is the state assessing civil penalties for violations at levels sufficient to ensure compliance and is the state making publicly available information that demonstrates the effectiveness of the state's enforcement program?

(4) Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint-driven reporting, etc.) for learning about excavation damage to underground facilities?

(5) Does the state employ excavation damage investigation practices that are adequate to determine the at-fault party when excavation damage to underground facilities occurs?

(6) At a minimum, does the state's excavation damage prevention law require the following:

a. Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.

b. Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.

c. An excavator who causes damage to a pipeline facility:

i. Must report the damage to the owner or operator of the facility at the earliest practical moment following discovery of the damage; and

ii. If the damage results in the escape of any flammable, toxic, or corrosive gas or liquid that may endanger life or cause serious bodily harm or damage to property, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.

(7) Does the state limit exemptions for excavators from its excavation damage prevention law? A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements. PHMSA will make the written justifications available to the public.

(b) PHMSA may also consider individual enforcement actions taken by a state in evaluating the effectiveness of a state's damage prevention enforcement program.

§ 198.57 What is the process PHMSA will use to notify a state that its damage prevention enforcement program appears to be inadequate?

PHMSA will issue a notice of inadequacy to the state in accordance with 49 CFR § 190.5. The notice will state the basis for PHMSA's determination that the state's damage prevention enforcement program appears inadequate for purposes of this subpart and set forth the state's response options.

§ 198.59 How may a state respond to a notice of inadequacy?

A state receiving a notice of inadequacy will have 30 days from receipt of the notice to submit a written response to the PHMSA official that issued the notice. In its response, the state may include information and explanations concerning the alleged inadequacy or contest the allegation of inadequacy and request the notice be withdrawn.

§ 198.61 How is a state notified of PHMSA's final decision?

PHMSA will issue a final decision on whether the state's damage prevention enforcement program has been found inadequate in accordance with 49 CFR 190.5.

§ 198.63 How may a state with an inadequate excavation damage prevention law enforcement program seek reconsideration by PHMSA?

At any time following a finding of inadequacy, the state may petition PHMSA to reconsider such finding based on changed circumstances including improvements in the state's enforcement program. Upon receiving a petition, PHMSA will reconsider its finding of inadequacy promptly and will notify the state of its decision on reconsideration promptly but no later than the time of the next annual certification review.

Issued in Washington, DC on March 26, 2012.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2012–7550 Filed 3–30–12; 8:45 am]

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Part IV

Department of Labor

Employee Benefits Security Administration

Grant of Individual Exemption Involving BlackRock, Inc. and Its Investment Advisory, Investment Management and Broker-Dealer Affiliates and Their Successor Located in New York, NY; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2012–09; Exemption Application No. D–11673]

Grant of Individual Exemption Involving BlackRock, Inc. and Its Investment Advisory, Investment Management and Broker-Dealer Affiliates and Their Successor Located in New York, NY

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), the Federal Employees' Retirement System Act of 1986, as amended (FERSA), and the Internal Revenue Code of 1986, as amended (the Code). The transactions involve BlackRock, Inc. and its investment advisory, investment management and broker-dealer affiliates and their successors. The individual exemption affects plans for which BlackRock, Inc. and its investment advisory, investment management and broker-dealer affiliates and their successors serve as fiduciaries, and the participants and beneficiaries of such plans.

DATES: *Effective Date:* The individual exemption will be effective March 31, 2012, except that, with respect to Covered Transactions described in Section III.K. and S. of the individual exemption, the individual exemption will be effective October 1, 2011.

SUPPLEMENTARY INFORMATION: On January 19, 2012, the Department of Labor (the Department) published a notice of proposed individual exemption from the restrictions of ERISA sections 406(a)(1) and 406(b), FERSA sections 8477(c)(1) and (c)(2) and the sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1) (the Proposed Exemption).[1] The Proposed Exemption was requested by BlackRock, Inc. and its investment advisory, investment management and broker-dealer affiliates and their successors pursuant to ERISA section 408(a), Code section 4975(c)(2) and FERSA section 8477(c)(3), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final individual exemption is being issued solely by the Department.

For further information regarding the individual exemption, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11673) that the Department maintains with respect to the individual exemption. The complete application file, as well as supplemental submissions received by the Department, is made available for public inspection in the Public Documents room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant the individual exemption, refer to the notice of proposed exemption published on January 19, 2012, at 77 FR 2798.

FOR FURTHER INFORMATION CONTACT: Brian Shiker, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8552.

Exemption

Section I: Covered Transactions Generally

Effective March 31, 2012 (or, in the case of Covered Transactions described in Section III.K or Section III.S. of this exemption, October 1, 2011), the restrictions of ERISA sections 406(a)(1) and 406(b), FERSA section 8477(c)(1) and (2), and the sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1),[2] shall not apply to the Covered Transactions set forth in Section III and entered into on behalf of or with the assets of a Client Plan; provided, that (x) the generally applicable conditions of Section II of this exemption are satisfied, and, as applicable, the transaction-specific conditions set forth below in Sections III and IV of this exemption are satisfied, or (y) the Special Correction Procedure set forth in Section V of this exemption is satisfied.

Section II: Generally Applicable Conditions

A. Compliance With the QPAM Exemption

The following conditions of Part I of Prohibited Transaction Exemption 84–14, as amended (PTE 84–14 or the QPAM Exemption),[3] must be satisfied with respect to each Covered Transaction:

1. The BlackRock Manager engaging in the Covered Transaction is a Qualified Professional Asset Manager;

2. Except as set forth in Section III of this exemption, at the time of the Covered Transaction (as determined under Section VI(i) of the QPAM Exemption) with or involving an MPS, such MPS, or its affiliate (within the meaning of Section VI(c) of the QPAM Exemption),[4] does not have the authority to:

(a) Appoint or terminate the BlackRock Manager as a manager of the Client Plan assets involved in the Covered Transaction, or

(b) negotiate on behalf of the Client Plan the terms of the management agreement with the BlackRock Manager (including renewals or modifications thereof) with respect to the Client Plan assets involved in the Covered Transaction;

3.(a) Notwithstanding the foregoing, in the case of an investment fund (as defined in Section VI(b) of the QPAM Exemption) in which two or more unrelated Client Plans have an interest, and which is a Pooled Fund, a Covered Transaction with an MPS will be deemed to satisfy the requirements of Section II.A.2. of this exemption if the assets of a Client Plan on behalf of which the MPS or its affiliate possesses the authority set forth in Section II.A.2.(a) and/or (b) above, and which are managed by the BlackRock Manager in the investment fund, when combined with the assets of other Client Plans established or maintained by the same employer (or an affiliate thereof described in Section VI(c)(1) of the QPAM Exemption) or by the same employee organization, on behalf of which the same MPS and/or its affiliates possess such authority and which are managed by the BlackRock Manager in the same investment fund, represent less than ten percent (10%) of the assets of the investment fund; and

[1] 77 FR 2798 (January 19, 2012).

[2] For purposes of this exemption, references to ERISA section 406 should be read to refer as well to the corresponding provisions of Code section 4975 and FERSA section 8477(c).

[3] 49 FR 9494 (Mar. 13, 1984), as amended, 70 FR 49305 (Aug. 23, 2005), and as amended, 75 FR 38837 (July 6, 2010).

[4] Solely for purposes of Section II.A.2. and Section II.A.3. of this exemption, no BlackRock Entity will be deemed to be an affiliate of an MPS. The Department is not making herein a determination as to whether any BlackRock Entity is an affiliate of an MPS under ERISA.

(b) The conditions set forth in Subsections 14. and 15. of Section III.H., Subsections 2(e) and 3. of Section III.K., Section III.L.2.(b) and Subsections 1. and 2. of Section III.S. of this exemption shall be deemed satisfied if, with respect to the Covered Transaction in question, Section II.A.2. of this exemption is satisfied by reason of Section II.A.3.(a) of this exemption.

4. The terms of the Covered Transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of, the BlackRock Manager and either the BlackRock Manager or (so long as the BlackRock Manager retains full fiduciary responsibility with respect to the Covered Transaction) a property manager acting in accordance with written guidelines established and administered by the BlackRock Manager, makes the decision on behalf of the investment fund to enter into the Covered Transaction, provided that the Covered Transaction is not part of an agreement, arrangement or understanding designed to benefit the MPS;

5. The Covered Transaction is not entered into with an MPS which is a party in interest or disqualified person with respect to any Client Plan whose assets managed by the BlackRock Manager, when combined with the assets of other Client Plans established or maintained by the same employer (or affiliate thereof described in Section VI(c)(1) of the QPAM Exemption) or by the same employee organization, and managed by the BlackRock Manager, represent more than twenty percent (20%) of the total client assets managed by the BlackRock Manager at the time of the Covered Transaction;

6. At the time the Covered Transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the BlackRock Manager, the terms of the Covered Transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties; and

7. Neither the BlackRock Manager nor any affiliate thereof (as defined in Section VI(d) of the QPAM Exemption),[5] nor any owner, direct or indirect, of a five percent (5%) or more interest in the BlackRock Manager[6] is a person who within the ten (10) years immediately preceding the Covered Transaction has been either convicted or released from imprisonment, whichever is later, as a result of: any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in ERISA section 411. For purposes of this section, a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

B. Compensation

None of the employees of a BlackRock Manager receives any compensation that is based on any Covered Transaction having taken place between Client Plans and any of the MPSs (as opposed to with another institution that is not an MPS). The fact that a specific Covered Transaction occurred with an MPS as opposed to a non-MPS counterparty is ignored by BlackRock and BlackRock Managers for compensation purposes. None of the employees of BlackRock or a BlackRock Manager receive any compensation from BlackRock or a BlackRock Manager which consists of equity Securities issued by an MPS, which fluctuates in value based on changes in the value of equity Securities issued by an MPS, or which is otherwise based on the financial performance of an MPS independent of BlackRock's performance, provided that this condition shall not fail to be met because the compensation of an employee of a BlackRock Manager fluctuates with the value of a broadly-based index which includes equity Securities issued by an MPS.

C. Exemption Policies and Procedures

BlackRock adopts and implements Exemption Policies and Procedures (EPPs) which address each of the types of Covered Transactions and which are designed to achieve the goals of: (1) Compliance with the terms of the exemption, (2) ensuring BlackRock's decision-making with respect to the Covered Transactions on behalf of Client Plans with MPSs or BlackRock Entities is done in the interests of the Client Plans and their participants and beneficiaries, and (3) to the extent possible, verifying that the terms of such Covered Transactions are at least as favorable to the Client Plans as the terms generally available in arm's length transactions with unrelated parties. The EPPs are developed with the cooperation of both the Exemption Compliance Officer (ECO) and the Independent Monitor (IM), and such EPPs are subject to the approval of the IM. The EPPs need not address transactions which are not within the definition of the term Covered Transactions.

Transgressions of the EPPs which do not result in Violations require correction only if the amount involved in the transgression and the extent of deviation from the EPPs is material, taking into account the amount of Client Plan assets affected by such transgressions (EPP Corrections). The ECO will make a written determination as to whether such transgressions require EPP Correction, and, if the ECO determines an EPP Correction is required, the ECO will provide written notice to the IM of the EPP Correction. The ECO will provide summaries for the IM of any such EPP Corrections as part of the quarterly report referenced in Section II.D.11.

D. Exemption Compliance Officer

BlackRock appoints an Exemption Compliance Officer (ECO) with respect to the Covered Transactions. If the ECO resigns or is removed, BlackRock shall appoint a successor ECO within a reasonable period of time, not to exceed thirty (30) days, which successor shall be subject to the affirmative written approval of the IM. With respect to the ECO, the following conditions shall be met:

1. The ECO is a legal professional with at least ten years of experience and extensive knowledge of the regulation of financial services and products, including under ERISA and FERSA;

2. A committee made up exclusively of members of the BlackRock Board of Directors (the Board) who are independent of BlackRock and the MPSs determines the ECO's compensation package, with input from the general counsel of BlackRock; the ECO's compensation is not set by BlackRock business unit heads, and there is no direct or indirect input regarding the identity or compensation of the ECO from any MPS;

3. The ECO's compensation is not based on performance of any BlackRock Entity or MPS, although a portion of the ECO's compensation may be provided in the form of BlackRock stock or stock equivalents;

[5] For the avoidance of doubt, all MPSs are excluded from the term ''affiliate'' for these purposes.

[6] For the avoidance of doubt, all MPSs are excluded from the term ''owner'' for these purposes.

4. The ECO can be terminated by BlackRock only with the approval of the IM;

5. The EPPs prohibit any officer, director or employee of BlackRock or any MPS or any person acting under such person's direction from directly or indirectly taking any action to coerce, manipulate, mislead, or fraudulently influence the ECO or any member of the ECO Function in the performance of his or her duties;

6. The ECO is responsible for monitoring Covered Transactions and shall determine whether Violations have occurred, and the appropriate correction thereof, consistent with the requirements of Section V of this exemption;

7. If the ECO determines a Violation has occurred, the ECO must determine why it occurred and what steps should be taken to avoid such a Violation in the future (e.g., additional training, additional procedures, additional monitoring, or additional and/or changed processes or systems);

8. The ECO is responsible for monitoring and overseeing the implementation of the EPPs and carrying out such other responsibilities stipulated or described in Section III of this exemption. The ECO may delegate such responsibilities to the ECO Function, but the ECO will remain responsible for monitoring and overseeing the ECO Function's implementation of the EPPs. When appropriate, the ECO will recommend changes to the EPPs to BlackRock and the IM. The ECO will consult with the IM regarding the need for, timing, and form of EPP Corrections;

9. The ECO, with the assistance of the ECO Function, carries out the responsibilities required of the ECO described in: (a) the definition of ''Index'' in this exemption and (b) with respect to loans of Securities to an MPS in Section III.L. of this exemption;

10. The ECO, with the assistance of the ECO Function, monitors Covered Transactions and situations resulting from Covered Transactions with or involving an MPS with respect to which, because of the investment of the MPS in BlackRock, an action or inaction on the part of a BlackRock Manager might be thought to be motivated by an interest which may affect the exercise of such BlackRock Manager's best judgment as a fiduciary. If a situation is identified by the ECO which poses the potential for a conflict, as specified in Section III of this exemption, the ECO shall consult with the IM, or refer decision-making to the discretion of the IM;

11. The ECO provides a quarterly report to the IM summarizing the material activities of the ECO for the preceding quarter and setting forth any Violations discovered during the quarter and actions taken to correct such Violations. With respect to Violations, the ECO report details changes to process put in place to guard against a substantially similar Violation occurring again, and recommendations for additional training, additional procedures, additional monitoring, or additional and/or changed processes or systems or training changes and BlackRock management's actions on such recommendations. In connection with providing the quarterly report for the second quarter and fourth quarter of each year, upon the request of the IM, the ECO and the IM shall meet in person to review the content of the report. Other members of the ECO Function may attend such meetings at the request of either the ECO or the IM;

12. In each quarterly report, the ECO certifies in writing to his or her knowledge that (a) the quarterly report is accurate; (b) BlackRock's compliance program is working in a manner which is reasonably designed to prevent Violations; (c) any Violations discovered during the quarter and the related corrections taken to date have been identified in the report; and (d) BlackRock has complied with the EPPs in all material respects;

13. No less frequently than annually, the ECO certifies to the IM as to whether BlackRock has provided the ECO with adequate resources, including, but not limited to, adequate staffing of the ECO Function, and, in connection with the quarterly report for the fourth quarter of each year, the ECO shall identify to the IM those BlackRock Managers that relied upon this exemption during the prior year and those that the ECO reasonably anticipates relying on this exemption during the current year; and

14. The ECO or ECO Function provides any further information regarding Covered Transactions that is reasonably requested by the IM.

E. Independent Monitor

BlackRock retains an Independent Monitor (IM) with respect to the Covered Transactions. If the IM resigns or is removed, BlackRock shall appoint a successor IM within a reasonable period of time, not to exceed thirty (30) days. The IM:

1. Agrees in writing to serve as IM, and he or she is independent within meaning of Section VI.TT.;

2. Approves the ECO selected by BlackRock, and as part of the approval process and annually thereafter approves in general terms the reasonableness of the ECO's compensation, taking into account such information as the IM may request of BlackRock and which BlackRock must supply, and approves any termination of the ECO by BlackRock;

3. Assists in the development of, and the granting of written approval of, the EPPs and any material alterations of the EPPs by determining that they are reasonably designed to achieve the goals of (a) compliance with the terms of the exemption, (b) ensuring BlackRock's decision-making with respect to Covered Transactions on behalf of Client Plans with MPSs or BlackRock Entities is done in the interests of the Client Plans and their respective participants and beneficiaries and, (c) requiring, to the extent possible, verification that the terms of such Covered Transactions are at least as favorable to the Client Plans as the terms generally available in comparable arm's length transactions with unrelated parties;

4. Consults with the ECO regarding the need for, timing and form of any EPP Corrections. The IM has the responsibilities with respect to corrections of Violations, as set forth in Section V of this exemption. In response to EPP Corrections or Violations, the IM considers whether, and must have the authority, to require further sampling, testing or corrective action if necessary;

5. Exercises discretion for Client Plans in situations specified in Section III of this exemption where BlackRock Managers may be thought to have conflicts;

6. Performs certain monitoring functions described in Section III, and carries out the responsibilities required of the IM, as set forth in the definition of ''Index'' in this exemption, and with respect to loans of Securities to an MPS as set forth in Section III.L. of this exemption, and carries out such other responsibilities stipulated in Section III of this exemption;

7. Reviews the quarterly reports of the ECO, obtains and reviews representative samples of the data underlying the quarterly reports of the ECO, and, if the IM deems it appropriate, obtains additional factual information on either an ad hoc basis or on a systematic basis;

8. Reviews the certifications of the ECO as to whether (a) the quarterly report is accurate; (b) BlackRock's compliance program is working in a manner which is reasonably designed to prevent Violations; (c) any Violations discovered during the quarter and the related corrections taken to date have been identified in the report; (d) BlackRock has complied with the EPPs

in all material respects; and (e) BlackRock has provided the ECO with adequate resources, including, but not limited to, adequate staffing of the ECO Function;

9. Determines, on the basis of the information supplied to the IM by BlackRock and the ECO or the ECO Function, whether there has occurred a pattern or practice of insufficient diligence in adhering to the EPPs and/or the conditions of the exemption, and if such a determination is made, reports the same to the Department, and informs BlackRock and the ECO of any such report;

10. Determines whether the purchases of equity Securities issued by an MPS on behalf of Client Plans that are Other Accounts or Funds by a BlackRock Manager has had a positive material impact on the market price for such Securities, notwithstanding any volume limitations imposed by Section III.R. of the exemption and/or imposed by the IM with respect to such equity Securities. The IM makes this determination based upon its review of the relevant monthly reports required by the exemption with respect to such Covered Transactions provided by the ECO and publicly available information materially related to the trading of the Securities of an MPS on its primary listing exchange (or market);

11. Issues an annual compliance report, to be timely delivered to (i) the Chairman of the Board, (ii) the Chief Executive Officer of BlackRock and (iii) the General Counsel of BlackRock. The annual compliance report shall be based on a review of the EPPs, the quarterly reports provided by the ECO, any transactions reviewed by the IM as well as any additional information the IM requests from BlackRock, and certifying to each of the following (or describing any exceptions thereto) that:

(a) The EPPs are reasonably designed to achieve the goals of (i) compliance with the terms of the exemption, (ii) ensuring BlackRock's decision-making with respect to Covered Transactions on behalf of Client Plans with MPSs or BlackRock Entities is done in the interests of the Client Plans and the respective participants and beneficiaries, and (iii) requiring to the extent possible, verification that the terms of any Covered Transaction are at least as favorable to Client Plans as the terms generally available in comparable arm's length transactions with unrelated parties;

(b) The EPPs and the other terms of the exemption were complied with, with any material exceptions duly noted;

(c) The IM has made the determination referred to in Section II.E.9. and the results of that determination;

(d) BlackRock has provided the ECO with adequate resources, including but not limited to adequate staffing of the ECO Function; and

(e) The compensation package for the ECO for the prior year is reasonable;

12. The annual compliance report of the IM, as described in Section II.E.11., shall contain a summary of Violations and a summary of any corrections of Violations required by the IM and/or the ECO at any time during the prior year. In addition, the IM further certifies that BlackRock correctly implemented the prescribed corrections, based in part on certification from the ECO; and

13. The annual compliance report of the IM shall also be timely delivered by the IM to the chief executive officer, the general counsel and the members of the board of directors of each of the BlackRock Managers identified to the IM by the ECO or ECO Function as having relied upon this exemption during the prior year and those that the ECO reasonably anticipates will be relying on this exemption during the current year. The copies of the compliance report described in this Section II.E.13. shall be accompanied by a cover letter from the IM calling the attention of the recipients to any Violations, material exceptions to compliance with the EPPs, or other shortfalls in compliance with the exemption to assist such officers and directors in carrying out their respective responsibilities.

Section III: Covered Transactions

A. Purchases and Holdings by BlackRock Managers of Fixed Income Obligations Issued by an MPS in an Underwriting on Behalf of Client Plans Invested in an Index Account or Fund, or in a Model-Driven Account or Fund

Relief under Section I of this exemption is available for a purchase and holding by BlackRock Managers of Fixed Income Obligations issued by an MPS in an underwriting on behalf of Client Plans for an Index Account or Fund, or a Model-Driven Account or Fund, provided that:

1. Such purchase is for the sole purpose of maintaining quantitative conformity with the weight of such Securities prescribed by the relevant Index, for Index Accounts or Funds, or the weight of such Securities prescribed by the relevant Model, for Model-Driven Accounts or Funds; and such purchase is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a de minimis amount;

2. Such purchase is not made from any MPS;

3. No BlackRock Entity is in the selling syndicate;

4. After purchase, the responsible BlackRock Manager notifies the ECO if circumstances arise in which an action or inaction on the part of the BlackRock Manager regarding an MPS Fixed Income Obligation so acquired might be thought to be motivated by an interest which may affect the exercise of such BlackRock Manager's best judgment as a fiduciary, and complies with decisions of the ECO regarding the taking, or the refraining from taking, of actions in such circumstances; and

5. After purchase, any decision regarding conversion of an MPS Fixed Income Obligation into equity in the MPS is made by the IM.

B. Purchase and Holding by BlackRock Managers of Fixed Income Obligations Issued by an MPS in an Underwriting on Behalf of Client Plans Invested in an Other Account or Fund

Relief under Section I of this exemption is available for a purchase and holding by BlackRock Managers of Fixed Income Obligations issued by an MPS in an underwriting on behalf of Client Plans invested in an Other Account or Fund provided that:

1. The conditions of Section IV.A. of this exemption are satisfied, except that for purposes of Section IV.A.4.(a) and Section IV.A.5.(c), the MPS-issued Fixed Income Obligations at the time of purchase must be rated in one of the three highest rating categories by a Rating Organization and none of the Rating Organizations may rate the Fixed Income Obligations lower than in the third highest rating category;

2. Such purchase is not made from an MPS;

3. No BlackRock Entity is in the selling syndicate;

4. After purchase, the responsible BlackRock Manager notifies the ECO if circumstances arise in which an action or inaction on the part of the BlackRock Manager regarding an MPS Fixed Income Obligation so acquired might be thought to be motivated by an interest which may affect the exercise of such BlackRock Manager's best judgment as a fiduciary, and complies with decisions of the ECO regarding the taking, or the refraining from taking, of actions in such circumstances; and

5. After purchase, any decision regarding conversion of an MPS Fixed Income Obligation into equity in the MPS is made by the IM.

C. Certain Transactions in the Secondary Market by BlackRock Managers of Fixed Income Obligations including Fixed Income Obligations Issued by and/or Traded With an MPS, and/or Under Which an MPS Has Either an Ongoing Function or Can Potentially Incur Liability

Relief under Section I of this exemption is available for a purchase or sale in the secondary market or the holding by BlackRock Managers on behalf of Client Plans of (i) Fixed Income Obligations issued by an MPS, (ii) Fixed Income Obligations issued by a third party or an MPS and purchased from or sold to an MPS, and/or (iii) Fixed Income Obligations under which an MPS has either an ongoing function or can potentially incur liability, provided that:

1. If the Fixed Income Obligations are purchased from or sold to an MPS, it is as a result of the Three Quote Process.

2. With respect to Fixed Income Obligations that are issued by an MPS and are purchased and held by a BlackRock Manager for a Client Plan—

(a) After purchase, the responsible BlackRock Manager notifies the ECO if circumstances arise in which an action or inaction on the part of the BlackRock Manager regarding an MPS Fixed Income Obligation so acquired might be thought to be motivated by an interest which may affect the exercise of such BlackRock Manager's best judgment as a fiduciary, and complies with the decisions of the ECO regarding the taking, or the refraining from taking, of actions in such circumstances;

(b) After purchase, any decision regarding conversion of an MPS Fixed Income Obligation into equity in the MPS is made by the IM; and

(c) If purchased for an Index Account or Fund, or a Model-Driven Account or Fund, such purchase is for the sole purpose of maintaining quantitative conformity with the weight of such Securities prescribed by the relevant Index, for Index Accounts or Funds, or the weight of such Securities prescribed by the relevant Model, for Model-Driven Accounts or Funds and such purchase is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a de minimis amount.

3. With respect to Fixed Income Obligations (whether or not issued by an MPS) held by a BlackRock Manager for a Client Plan under which an MPS has an ongoing function, such as servicing of collateral for asset-backed debt, or the potential for liability, such as under representations or warranties made by an MPS with respect to collateral for such asset-backed debt which the MPS originated, the taking of or refraining from taking any action by the responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the ECO.

4. With respect to any Fixed Income Obligation acquired under this Section III.C. which is a guaranteed governmental mortgage pool certificate within the meaning of 29 CFR 2510.3–101(i) which is accompanied by an implicit U.S. Government guarantee as opposed to an explicit U.S. Government guarantee, (a) the BlackRock Manager initiating a purchase of such Securities makes a determination that such Securities are of substantially similar credit quality as guaranteed governmental mortgage pool certificates accompanied by an explicit U.S. Government guarantee, (b) the ECO (in regular consultation with and under the supervision of the IM) monitors the credit spread between such implicitly and explicitly guaranteed certificates, and (c) each of the ECO and the IM (independently) has the authority and responsibility to determine whether purchases of implicitly guaranteed certificates should not be permitted due to such credit spread, and such authority and responsibility is reflected in the EPPs.

5. For purposes of this Section III.C., Asset-Backed Securities are not Fixed Income Obligations.

D. Purchase in an Underwriting and Holding by BlackRock Managers of Fixed Income Obligations Issued by a Third Party When an MPS Is Underwriter, in Either a Manager or a Member Capacity, and/or Under Which an MPS Has Either an Ongoing Function or Can Potentially Incur Liability

Relief under Section I of this exemption is available for the purchase and holding by BlackRock Managers of Fixed Income Obligations issued by third parties in an underwriting when an MPS is an underwriter, in either a manager or a member capacity, and/or Fixed Income Obligations under which an MPS has either an ongoing function or can potentially incur liability, provided that:

1. The conditions of Section IV.A. are satisfied.

2. Such purchase is not made from an MPS.

3. No BlackRock Entity is in the selling syndicate.

4. With respect to Fixed Income Obligations under which an MPS has either an ongoing function, such as debt trustee, servicer of collateral for asset-backed debt, or the potential for liability, such as under representations or warranties made by an MPS with respect to collateral for such asset-backed debt which the MPS originated, the taking of or refraining from taking any action by the responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the ECO.

5. With respect to any Fixed Income Obligation acquired under this Section III.D. which is a guaranteed governmental mortgage pool certificate within the meaning of 29 CFR 2510.3–101(i) which is accompanied by an implicit U.S. Government guarantee as opposed to an explicit U.S. Government guarantee, (a) the BlackRock Manager initiating a purchase of such Securities makes a determination that such Securities are of substantially similar credit quality as guaranteed governmental mortgage pool certificates accompanied by an explicit U.S. Government guarantee, (b) the ECO (in regular consultation with and under the supervision of the IM) monitors the credit spread between such implicitly and explicitly guaranteed certificates, and (c) each of the ECO and the IM (independently) has the authority and responsibility to determine whether purchases of implicitly guaranteed certificates should not be permitted due to such credit spread, and such authority and responsibility is reflected in the EPPs.

6. For purposes of this Section III.D., Asset-Backed Securities are not Fixed Income Obligations.

E. Purchase in an Underwriting and Holding by BlackRock Managers of Asset-Backed Securities, When an MPS Is an Underwriter, in the Capacity as Either a Manager or a Member of the Selling Syndicate, Trustee, or, in the Case of Asset-Backed Securities Which Are CMBS, Servicer

Relief under Section I of this exemption is available for the purchase and holding by BlackRock Managers of Asset-Backed Securities issued in an underwriting where an MPS is (i) an underwriter, in the capacity as either a manager or a member of the selling syndicate, (ii) trustee, or (iii) solely in the case of Asset-Backed Securities which are CMBS, serves as servicer of a trust that issued such CMBS, provided that:

1. The conditions of Section IV.A. are satisfied, except that (a) for purposes of Section IV.A.4.(a), the Asset-Backed Securities at the time of purchase must be rated in one of the three highest rating categories by a Rating Organization and none of the Rating Organizations may rate the Asset-

Backed Securities lower than the third highest rating category, (b) in the case of Asset-Backed Securities which are CMBS and for which the MPS is servicer, the conditions of Section IV.B. are satisfied instead of the conditions of Section IV.A., and (c) if an MPS is an underwriter and an MPS is a servicer as described in clause (b), the conditions of both Section IV.A., as modified by Section III.E.1.(a), and Section IV.B. must be satisfied;

2. Such purchase is not made from an MPS;

3. No BlackRock Entity is in the selling syndicate;

4. In the case of Asset-Backed Securities with respect to which an MPS has either an ongoing function, such as trustee, servicer of collateral for CMBS, or the potential for liability, such as under representations or warranties made by an MPS with respect to collateral for CMBS which collateral the MPS originated, the taking of or refraining from taking of any action by a responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the ECO; and

5. The purchase meets the conditions of an applicable Underwriter Exemption.

F. Purchase and Holding by BlackRock Managers of Equity Securities Issued by an Entity Which Is Not an MPS and Is Not a BlackRock Entity, in an Underwriting When an MPS Is an Underwriter, in Either a Manager or a Member Capacity

Relief under Section I of this exemption is available for the purchase and holding by BlackRock Managers of equity Securities issued by an entity which is not an MPS and which is not a BlackRock Entity in an underwriting when an MPS is an underwriter, in either a manager or a member capacity, provided that:

1. The conditions of Section IV.A. are satisfied;

2. Such purchase is not made from an MPS;

3. No BlackRock Entity is in the selling syndicate; and

4. The Securities are not Asset-Backed Securities.

G. Purchase and Sale by BlackRock Managers of Asset-Backed Securities in the Secondary Market, From or to an MPS, and/or When an MPS Is Sponsor, Servicer, Originator, Swap Counterparty, Liquidity Provider, Trustee or Insurer, and the Holding Thereof

Relief under Section I of this exemption is available for a sale of Asset-Backed Securities by a BlackRock Manager to an MPS, or the purchase of Asset-Backed Securities by BlackRock Managers from an MPS and the holding thereof, and/or any such purchase or sale in the secondary market or holding when an MPS is a sponsor, a servicer, an originator, a swap counterparty, a liquidity provider, a trustee or an insurer, provided that:

1. If the Asset-Backed Securities are purchased from or sold to an MPS, the purchase or sale is as a result of the Three Quote Process.

2. Regardless of from whom the BlackRock Manager purchases the Asset-Backed Securities, the purchase and holding of the Asset-Backed Security otherwise meets the conditions of an applicable Underwriter Exemption.

3. Regardless of from whom the BlackRock Manager purchased the Asset-Backed Securities, if an MPS is, with respect to such Asset-Backed Securities, a sponsor, servicer, originator, swap counterparty, liquidity provider, insurer or trustee, as those terms are utilized or defined in the Underwriter Exemptions, and circumstances arise in which the taking of or refraining from taking of any action by the responsible BlackRock Manager could have a material positive or negative effect upon the MPS, the taking of or refraining from taking of any such action is decided upon by the ECO.

H. Repurchase Agreements When an MPS Is the Seller

Section I of this exemption applies to an investment by a BlackRock Manager of Client Plan assets which involves the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of a Client Plan of a repurchase agreement (or Securities or other instruments under cover of a repurchase agreement) in which the seller of the underlying Securities or other instruments is an MPS which is a bank supervised by the United States or a State, a broker-dealer registered under the 1934 Act, or a dealer who makes primary markets in Securities of the United States government or any agency thereof, or in banker's acceptances, and reports daily to the Federal Reserve Bank of New York its positions with respect to these obligations, provided that each of the following conditions are satisfied:

1. The repurchase agreement is embodied in, or is entered into pursuant to a written agreement, and such written agreement is a standardized industry form;

2. The repurchase agreement has a term of one year or less;

3. The Client Plan receives interest no less than that which it would receive in a comparable arm's length transaction with an unrelated party;

4. The Client Plan receives Securities, banker's acceptances, commercial paper or certificates of deposit having a market value equal to not less than one hundred percent (100%) of the purchase price paid by the Client Plan;

5. Upon expiration of the repurchase agreement and return of the Securities or other instruments to the seller, the seller transfers to the Client Plan an amount equal to the purchase price plus the appropriate interest;

6. The Securities, banker's acceptances, commercial paper or certificates of deposit received by the Client Plan:

(a) Could be acquired directly by the Client Plan in a transaction not covered by this Section III.H. without violating ERISA sections 406(a)(1)(E), 406(a)(2) or 407(a); and,

(b) If the Securities are subject to the provisions of the 1933 Act, they are obligations that are not ''restricted securities'' within the meaning of Rule 144 under the 1933 Act.

7. If the market value of the underlying Securities or other instruments falls below the purchase price at any time during the term of the agreement, the Client Plan may, under the written agreement required by Section III.H.1., require the MPS seller to deliver, by the close of business on the following business day (as such term is defined for purposes of the relevant written agreement), additional Securities or other instruments the market value of which, together with the market value of Securities or other instruments previously delivered or sold to the Client Plan under the repurchase agreement, equals at least one hundred percent (100%) of the purchase price paid by the Client Plan.

8. If the MPS seller does not deliver additional Securities or other instruments as required above, the Client Plan may terminate the agreement, and, if upon termination or expiration of the agreement, the amount owing is not paid to the Client Plan, the Client Plan may sell the Securities or other instruments and apply the proceeds against the obligations of the MPS seller under the agreement, and against any expenses associated with the sale.

9. The MPS seller agrees to furnish the Client Plan with the most recent available audited statement of its financial condition as well as its most recent available unaudited statement, agrees to furnish additional audited and unaudited statements of its financial

condition as they are issued and either: (a) Agrees that each repurchase agreement transaction pursuant to the agreement shall constitute a representation by the MPS seller that there has been no material adverse change in its financial condition since the date of the last statement furnished that has not been disclosed to the Client Plan with whom such written agreement is made; or (b) prior to each repurchase agreement transaction, the MPS seller represents that, as of the time the transaction is negotiated, there has been no material adverse change in its financial condition since the date of the last statement furnished that has not been disclosed to the Client Plan with whom such written agreement is made.

10. In the event of termination and sale as described in Section III.H.9., the MPS seller pays to the Client Plan the amount of any remaining obligations and expenses not covered by the sale of the Securities or other instruments, plus interest at a reasonable rate.

11. If an MPS seller involved in a repurchase agreement covered by this exemption fails to comply with any condition of this exemption in the course of engaging in the repurchase agreement, the BlackRock Manager who caused the plan to engage in such repurchase agreement shall not be deemed to have caused the plan to engage in a transaction prohibited by ERISA sections 406(a)(1)(A) through (D) or ERISA section 406(b), Code section 4975, or FERSA section 8477(c) solely by reason of the MPS seller's failure to comply with the conditions of the exemption.

12. In the event of any dispute between a BlackRock Manager and an MPS seller involving a Covered Transaction under this Section III.H., the IM has the responsibility to decide whether, and if so how, BlackRock is to pursue relief on behalf of the Client Plan(s) against the MPS seller.

13. At time of entry into or renewal of each Covered Transaction under this Section III.H., including both term repurchase transactions and daily renewals for ''open'' or ''overnight'' transactions, either (a) each Covered Transaction under this Section III.H., is as a result of the Three Quote Process, or, (b) the BlackRock Manager determines that the yield on the proposed transaction, or the renewal thereof, is at least as favorable to the Client Plans as the yield of the Client Plan on two (2) other available transactions which are comparable in terms of size, collateral type, credit quality of the counterparty, term and rate. The methodology employed for purposes of the comparison in (b) above must (c) be approved in advance by the ECO Function and (d), to the extent possible, refer to objective external data points, such as the Eurodollar overnight time deposit bid rate, the rate for repurchase agreements with U.S. government Securities, or rates for commercial paper issuances or agency discount note issuances sourced from Bloomberg, or another third party pricing service or market data provider (which providers may use different terminology to refer to these same external data points). The applicable BlackRock Manager must record a description of the comparable transactions, if reliance is placed upon same, and such data must be periodically reviewed by the ECO Function. The procedures described in this Section III.H.13. must be designed to ensure that BlackRock Managers determine to only enter into Covered Transactions with MPS sellers which are in the interests of Plan Clients, and such procedures must be reviewed and may be commented on by the IM.

14. Neither the MPS Seller nor a member of the same MPS Group as the MPS Seller has discretionary authority or control with respect to the investment of Client Plan assets involved in a Covered Transaction under this Section III.H; provided that, this condition will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption.

15. The Client Plan is not an MPS Plan of the MPS with whom the purchase or sale takes place, or an MPS Plan of another MPS member of the same MPS Group as such MPS; provided that, this condition will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption.

I. Responding to Tender Offers and Exchange Offers Solicited by an MPS

Relief under Section I of this exemption is available for participation by BlackRock Managers on behalf of Client Plans in tender offers or exchange offers or similar transactions where an MPS acts as agent for the entity (which entity may not be an MPS) making the offer, provided that:

1. The Client Plan pays no fees to the MPS in connection with this Covered Transaction;

2. The BlackRock Manager submits to the ECO in advance of participation a written explanation of the reasons for such participation; and

3. The ECO Function determines that the reasons for participation by the BlackRock Manager in the Covered Transaction are appropriate from the vantage point of the Client Plans, with such determination affirmatively made in writing prior to the BlackRock Manager participating in the Covered Transactions under this Section III.I.

J. Purchase in Underwritings of Securities Issued by an Entity Which Is not an MPS When the Proceeds Are Used To Repay a Debt to an MPS

Relief under Section I of this exemption is available for the purchase by BlackRock Managers of Securities in underwritings issued by an entity which is not an MPS, but where the proceeds of the offering are used to repay a debt owed to an MPS, and the payment of such proceeds to the MPS, provided that the BlackRock Manager does not know that the proceeds will be applied to the repayment of debt owed to an MPS. If the BlackRock Manager does know that proceeds of the offering will be applied to the repayment of debt owed to an MPS, the purchase of the Securities and the payment of the proceeds to the MPS are exempt under Section I of this exemption provided that no more than twenty percent (20%) of the offering is purchased by BlackRock Managers for Client Plans, and no more than fifty percent (50%) of the offering in the aggregate is purchased by BlackRock, BlackRock Managers and other BlackRock Entities for Client Plans, other clients of BlackRock Managers, or as proprietary investments.

K. Bank Deposits and Commercial Paper

Relief under Section I of this exemption is available for an investment by a BlackRock Manager of Client Plan assets which involves the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of a Client Plan of certificates of deposit, time deposits or other bank deposits at an MPS and/or placed by an MPS and/or sold to or purchased from an MPS, or in commercial paper issued by an MPS or with respect to which an MPS acts in some continuing capacity such as placement agent or administrator and/or which is sold to or purchased from an MPS, provided that:

1. With respect to bank deposits, either:

(a)(i) The bank is supervised by the United States or a State, and at the outset of the Covered Transaction or renewal thereof of, such bank has a credit rating in one of the top two (2) categories by at least one of the Rating Organizations; and (ii) such deposit bears a reasonable interest rate, or —

(b) The BlackRock Manager and the MPS comply with ERISA section 408(b)(4).

2. With respect to commercial paper:

(a) The Client Plan is not an MPS Plan of the MPS issuing the commercial paper, provided that, this condition will be deemed to be met if such a Client Plan meets the conditions of Section II.A.2. and II.A.3. of this exemption;

(b) The commercial paper has a stated maturity date of nine (9) months or less from the date of issue, exclusive of days of grace, or is a renewal of an issue of commercial paper the maturity of which is likewise limited;

(c) At the time it is acquired, the commercial paper is ranked in one of the two (2) highest rating categories by at least one of the Rating Organizations;

(d) If the seller or purchaser of the commercial paper is an MPS, purchases and sales are made pursuant to the Three Quote Process, provided that for purposes of this Section III.K.2., firm quotes on comparable short-term money market instruments rated in the same category may be used for purposes of the Three Quote Process; and

(e)(i) the Client Plan is not an MPS Plan of the MPS with whom the purchase or sale takes place, or an MPS Plan of another MPS member of the same MPS Group as such MPS; and (ii) the Client Plan is not an MPS Plan of an MPS which is acting in a continuing capacity, or an MPS Plan of another member of the same MPS Group as such MPS, provided that, the conditions set forth in clauses (i) and (ii) of this Section III.K.2.(e). will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption.

3. Neither the MPS involved in the Covered Transaction nor any member of the same MPS Group as the MPS involved in the Covered Transaction has discretionary authority or control with respect to the investment of Client Plan assets involved in the Covered Transaction under this Section III.K.; provided that, this condition will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption.

4. For purposes of the Covered Transactions set forth in this Section III.K. no BlackRock Entity shall be regarded as an affiliate of an MPS bank at which a deposit is made of Client Plan assets, nor of an MPS issuer of commercial paper in which a BlackRock Manager invests Client Plan assets.

L. Securities Lending to an MPS

1. Relief under Section I of this exemption is available for:

(a) The lending of Securities by a BlackRock Manager that are assets of an Index Account or Fund or a Model-Driven Account or Fund to an MPS which is a U.S. Broker-Dealer or a U.S. Bank provided that the conditions set forth in Section III.L.2. are met;

(b) the lending of Securities by a BlackRock Manager that are assets of an Index Account or Fund or a Model-Driven Account or Fund to an MPS which is a Foreign Broker-Dealer or Foreign Bank; provided that, the conditions set forth in Section III.L.2. and Section III.L.3. below are met; and

(c) the payment to a BlackRock Manager of compensation for services rendered in connection with loans of assets of an Index Account or Fund or a Model-Driven Account or Fund that are Securities to an MPS; provided that, the conditions set forth in Section III.L.4. below are met.

2. General Conditions for Covered Transactions Described in Sections III.L.1.(a) and (b).

(a) The length of a Securities loan to an MPS does not exceed one year in term.

(b) Neither the MPS borrower nor any MPS which is a member of the same MPS Group as the MPS borrower has or exercises discretionary authority or control with respect to the investment of the Client Plan assets involved in the transaction. This Section III.L.2.(b) shall be deemed satisfied notwithstanding the investment of the assets of an MPS Plan of the MPS which is the borrower under such Securities lending transaction in a Pooled Fund as of the date of the Acquisition, which Pooled Fund is a bank-maintained common or collective trust, provided that such assets when aggregated with the assets of all other MPS Plans of the same MPS Group as that of the MPS borrower and invested in such Pooled Fund, at all times since the date of the Acquisition, constitute less than ten percent (10%) of the assets of such Pooled Fund; provided that, this Subsection III.L.2.(b) will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption.[7]

(c) The Client Plan receives from the MPS borrower by the close of the BlackRock Manager's business on the day in which the Securities lent are delivered to the MPS,

(i) U.S. Collateral having, as of the close of business on the preceding business day, a market value, or, in the case of bank letters of credit, a stated amount, equal to not less than one hundred percent (100%) of the then market value of the Securities lent; or

(ii) Foreign Collateral having as of the close of business on the preceding business day, a market value, or, in the case of bank letters of credit, a stated amount, equal to not less than:

(x) One hundred two percent (102%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the Securities are primarily traded if the collateral posted is denominated in the same currency as the Securities lent, or

(y) One hundred five percent (105%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the Securities are primarily traded if the collateral posted is denominated in a different currency than the Securities lent.

(d) Notwithstanding the foregoing, if the BlackRock Manager is a U.S. Bank, a Registered Investment Advisor, or a U.S. Broker-Dealer, and such BlackRock Manager indemnifies the Client Plan with respect to the difference, if any, between the replacement cost of the borrowed Securities and the market value of the collateral on the date of a borrower default, the Client Plan receives from the MPS borrower by the close of the BlackRock Manager's business on the day in which the Securities lent are delivered to the borrower, Foreign Collateral having as of the close of business on the preceding business day, a market value, or, in the case of bank letters of credit, a stated amount, equal to not less than:

(i) One hundred percent (100%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the Securities are primarily traded if the collateral posted is denominated in the same currency as the Securities lent; or

(ii) One hundred one percent (101%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the Securities are primarily traded if the collateral posted is denominated in a different currency than the Securities lent and such currency is denominated in Euros, British pounds, Japanese yen, Swiss francs or Canadian dollars; or

(iii) One hundred five percent (105%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System if the collateral posted is denominated in a different currency than the Securities lent and such currency is other than those specified above.

(e)(i) If the MPS borrower is a U.S. Bank or U.S. Broker-Dealer, the Client Plan receives such U.S. Collateral or

[7] For this purpose, MPS plans of Barclays MPSs and PNC MPSs are separately aggregated.

Foreign Collateral from the MPS borrower by the close of the BlackRock Manager's business on the day in which the Securities are delivered to the MPS borrower. Such collateral is received by the Client Plan either by physical delivery, wire transfer or by book entry in a Securities depository located in the United States, or

(ii) If the MPS borrower is a Foreign Bank or Foreign Broker-Dealer, the Client Plan receives U.S. Collateral or Foreign Collateral from the MPS borrower by the close of the BlackRock Manager's business on the day in which the Securities are delivered to the borrower. Such collateral is received by the Client Plan either by physical delivery, wire transfer or by book entry in a Securities depository located in the United States or held on behalf of the Client Plan at an Eligible Securities Depository. The indicia of ownership of such collateral shall be maintained in accordance with ERISA section 404(b) and 29 CFR 2550.404b–1.

(f) Prior to making of any such loan, the MPS borrower shall have furnished the BlackRock Manager with:

(i) The most recent available audited statement of the MPS borrower's financial condition, as audited by a United States certified public accounting firm or in the case of an MPS borrower that is a Foreign Broker-Dealer or Foreign Bank, a firm which is eligible or authorized to issue audited financial statements in conformity with accounting principles generally accepted in the primary jurisdiction that governs the borrowing MPS Foreign Broker-Dealer or Foreign Bank;

(ii) The most recent available unaudited statement of its financial condition (if the unaudited statement is more recent than such audited financial statement); and

(iii) A representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statement furnished to the BlackRock Manager that has not been disclosed to the BlackRock Manager. Such representations may be made by the MPS borrower's agreement that each loan shall constitute a representation by the MPS borrower that there has been no such material adverse change.

(g) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the Client Plan as an arm's-length transaction with an unrelated party would be. Such loan agreement states that the Client Plan has a continuing security interest in, title to, or the rights of secured creditor with respect to the collateral. Such agreement may be in the form of a master agreement covering a series of Securities lending transactions.

(h) The written loan agreement must be a standardized industry form; provided, that, with the approval of the ECO on or about the date of the Acquisition, written loan agreements with an MPS borrower that were in effect as of the date of the Acquisition may continue to be used until there is a material modification of the same, at which time standardized industry forms must be adopted.

(i) In return for lending Securities, the Client Plan:

(i) Receives a reasonable fee (in connection with the Securities lending transaction), and/or

(ii) Has the opportunity to derive compensation through the investment of the currency collateral. Where the Client Plan has that opportunity, the Client Plan may pay a loan rebate or similar fee to the MPS borrower, if such fee is not greater than the Client Plan would pay in a comparable transaction with an unrelated party.

(j) All fees and other consideration received by the Client Plan in connection with the loan of Securities are reasonable. The identity of the currency in which the payment of fees and rebates will be made is set forth in either the written loan agreement or the loan confirmation as agreed to by the MPS borrower and the BlackRock Manager prior to the making of the loan.

(i) Pricing of a loan to an MPS borrower is based on (i) rates for comparable loans of the same Security to non-MPS borrowers and (ii) third-party market data:

(x) For loans of liquid Securities (sometimes referred to as general collateral loans), an automatic system may be used to price loans so long as the resulting rate the Client Plan receives from the MPS borrower is at least as favorable to the Client Plan as the rate the BlackRock Managers are receiving for Client Plans or other clients from non-MPS borrowers of the same Security;

(y) For purposes of pricing loans of less liquid Securities (sometimes referred to as ''special loans''), and for purposes of determining whether to terminate or continue a loan which does not have a set term, pricing may also be based on a BlackRock trader determination that continuing the loan is in the interest of the Client Plan based on all relevant factors, including price (provided that price is within the range of prices of other loans of the same Security to comparable non-MPS borrowers by BlackRock Managers for Client Plans or other clients) and potential adverse consequences to the Client Plan of terminating the loan, provided that the pricing data used in making these decisions is retained and made available for possible review by the ECO.

(ii) Automatic pricing mechanisms and pricing decisions by traders are subject to ongoing periodic review by the ECO Function, and the results of such review are included in reports by the ECO to the IM. Specifically, the quarterly reports by the ECO to the IM must address the lending patterns of illiquid Securities to the MPS borrowers from all Client Plans, including the percentage that loans of such Securities to the MPSs represent of all loans of such Securities from all Client Plans.

(k) The Client Plan receives the equivalent of all distributions made to holders of the borrowed Securities during the term of the loan including, but not limited to, dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional Securities;

(l) If the market value of the collateral at the close of trading on a business day is less than the applicable percentage of the market value of the borrowed Securities at the close of trading on that day (as described in this Section III.L.2.(c) of this exemption), then the MPS borrower shall deliver, by the close of business on the following business day, an additional amount of U.S. Collateral or Foreign Collateral the market value of which, together with the market value of all previously delivered collateral, equals at least the applicable percentage of the market value of all the borrowed Securities as of such preceding day.

Notwithstanding the foregoing, part of the U.S. Collateral or Foreign Collateral may be returned to the MPS borrower if the market value of the collateral exceeds the applicable percentage (described in this Section III.L.2.(c) of this exemption) of the market value of the borrowed Securities, as long as the market value of the remaining U.S. Collateral or Foreign Collateral equals at least the applicable percentage of the market value of the borrowed Securities.

(m) The loan may be terminated by the Client Plan at any time, whereupon the MPS borrower shall deliver certificates for Securities identical to the borrowed Securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed Securities) to the Client Plan within the lesser of:

(i) The customary delivery period for such Securities,

(ii) Five business days, or

(iii) The time negotiated for such delivery by the BlackRock Manager for the Client Plan, and the borrower.

(n) In the event that the loan is terminated, and the MPS borrower fails to return the borrowed Securities or the equivalent thereof within the applicable time described in Section III.M.2.(m), the BlackRock Manager for the Client Plan may, under the terms of the loan agreement:

(i) Purchase Securities identical to the borrowed Securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the borrower under the agreement, and any expenses associated with the sale and/or purchase, and

(ii) The MPS borrower is obligated, under the terms of the loan agreement, to pay, and does pay to the Client Plan the amount of any remaining obligations and expenses not covered by the collateral, including reasonable attorney's fees incurred by the Client Plan for legal action arising out of default on the loans, plus interest at a reasonable rate.

Notwithstanding the foregoing, the MPS borrower may, in the event the MPS borrower fails to return borrowed Securities as described above, replace collateral, other than U.S. currency, with an amount of U.S. currency that is not less than the then current market value of the collateral, provided such replacement is approved by the BlackRock Manager.

(o) If the MPS borrower fails to comply with any provision of a loan agreement which requires compliance with this exemption, the BlackRock Manager who caused the Client Plan to engage in such transaction shall not be deemed to have caused the Client Plan to engage in a transaction prohibited by ERISA sections 406(a)(1)(A) through (D) or ERISA section 406(b) or FERSA section 8477(c) solely by reason of the borrower's failure to comply with the conditions of the exemption.

(p) If the Securities being loaned to an MPS borrower are managed in an Index Account or Fund, or a Model-Driven Account or Fund where the Index or the Model are created or maintained by the MPS borrower, the ECO Function periodically performs a review, no less frequently than quarterly, of the use of such MPS-sponsored Index or Model, and the Securities loaned from such an account or fund to the MPS, which review is designed to enable a reasonable judgment as to whether the use of such Index or Model, or any changes thereto, were for the purpose of benefitting BlackRock or the MPS through the Securities lending activity described in this Section III.L. If the ECO forms a reasonable judgment that the use of such Index or Model, or any changes thereto, were for the purpose of benefitting BlackRock or the MPS, the ECO shall promptly inform the IM.

(q) In the event of any dispute between the BlackRock Manager on behalf of a Client Plan and an MPS borrower involving a Covered Transaction under this Section III.L., the IM shall decide whether, and if so, how the BlackRock Manager is to pursue relief on behalf of the Client Plan(s) against the MPS borrower.

(r) Sophistication of Authorizing Fiduciary. Only Client Plans with total assets having an aggregate market value of a least $50 million are permitted to lend Securities to an MPS except as provided in clauses (1)–(3) below.

(1) Master Trusts. In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101, which entity is engaged in Securities lending arrangements with a BlackRock Manager, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) Single Authorizing Fiduciary for Multiple Unaffiliated Client Plans. In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101, which entity is engaged in Securities lending arrangements with such BlackRock Manager as securities lending agent, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity:

(A) Has full investment responsibility with respect to plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million; and

(3) Pooled Funds. In the case of two or more Client Plans invested in a Pooled Fund, whether or not through an entity described in paragraphs (r)(1) or (r)(2), the $50 million requirement shall be deemed satisfied if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by investors each having total net assets of at least $50 million. Such investors may include Client Plans, entities described in paragraphs(r)(1) or (r)(2), or other investors that are not employee benefit plans covered by section 406 of ERISA, section 4975 of the Code, or section 8477 of FERSA.

In addition, none of the entities described in this Section III.L.2.(r) are formed for the sole purpose of making loans of Securities.

(s) With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of Securities loans negotiated on behalf of Client Plans will be to borrowers unrelated to MPSs.

3. Specific Conditions for Transactions Described in Section III.L.1.(b).

(a) The BlackRock Manager maintains the written documentation for the loan agreement at a site within the jurisdiction of the courts of the United States.

(b) Prior to entering into a transaction involving an MPS Foreign Broker-Dealer that is described in Section VI.PP.(1) or (2) or an MPS Foreign Bank that is described in Section VI.OO.(1) either:

(i) The MPS Foreign Broker-Dealer or Foreign Bank agrees to submit to the jurisdiction of the United States; agrees to appoint an agent for service of process in the United States, which may be an affiliate (a Process Agent); consents to service of process on the Process Agent; and agrees that any enforcement by a Client Plan of its rights under the Securities lending agreement will, as the option of the Client Plan, occur exclusively in the United States courts; or

(ii) The BlackRock Manager, if a U.S. Bank, a Registered Investment Advisor, or U.S. Broker-Dealer, agrees to indemnify the Client Plan with respect to the difference, if any, between the replacement cost of the borrowed Securities and the market value of the collateral on the date of an MPS borrower default plus interest and any transaction costs incurred (including attorney's fees of such Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the Client Plan may incur or suffer directly arising out of a borrower default by the MPS Foreign Broker-Dealer or Foreign Bank.

(c) In the case of a Securities lending transaction involving an MPS Foreign Broker-Dealer that is described in Section VI.PP.(3) or an MPS Foreign Bank that is described in Section VI.OO.(2), the BlackRock Manager must be a U.S. Bank, a Registered Investment Advisor, or U.S. Broker-Dealer, and prior to entering into the loan transaction, such BlackRock Manager must agree to indemnify the Client Plan with respect to the difference, if any, between the replacement cost of the borrowed Securities and the market value of the collateral on the date of an MPS borrower default plus interest and any transaction costs incurred (including attorney's fees of such plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the Client Plan may incur or suffer directly arising out of a borrower default by the MPS Foreign Broker-Dealer or Foreign Bank.

4. Specific Conditions for Covered Transactions Described in Section III.L.1.(c):

(a) The loan of Securities is not prohibited by section 406(a) of ERISA or otherwise satisfies the conditions of this exemption.

(b) The BlackRock Manager is authorized to engage in Securities lending transactions on behalf of the Client Plan.

(c) The compensation, the terms of which are at least as favorable to the Client Plan as an arm's length transaction with an unrelated party, is reasonable and is paid in accordance with the terms of a written instrument, which may be in the form of a master agreement covering a series of Securities lending transactions.

(d) Except as otherwise provided in Section III.L.4.(f), the arrangement under which the compensation is paid:

(i) Is subject to the prior written authorization of a fiduciary of a Client Plan (the authorizing fiduciary), who is (other than in the case of an In-House Plan) independent of the BlackRock Manager, provided that for purposes of this Section III.L.4.(d) a fiduciary of an MPS Plan acting as the authorizing fiduciary shall be deemed independent of the BlackRock Manager so long as such fiduciary, as of the date of the authorization, is not a BlackRock Entity, and

(ii) May be terminated by the authorizing fiduciary within:

(x) The time negotiated for such notice of termination by the Client Plan and the BlackRock Manager, or

(y) Five business days, whichever is less, in either case without penalty to the Client Plan.

(e) No such authorization is made or renewed unless the BlackRock Manager shall have furnished the authorizing fiduciary with any reasonably available information which the BlackRock Manager reasonably believes to be necessary to determine whether such authorization should be made or renewed, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request.

(f) Special Rule for Commingled Investment Funds. In the case of a pooled separate account maintained by an insurance company qualified to do business in a State or a common or collective trust fund maintained by a bank or trust company supervised by a State or Federal agency, the requirements of Section III.L.4.(d) of this exemption shall not apply, provided that:

(i) The information described in Section III.L.4.(e) (including information with respect to any material change in the arrangement) shall be furnished by the BlackRock Manager to the authorizing fiduciary described in Section III.L.4.(d) with respect to each Client Plan whose assets are invested in the account or fund, not less than 30 days prior to implementation of the arrangement or material change thereto, and, where requested, upon the reasonable request of the authorizing fiduciary;

(ii) In the event any such authorizing fiduciary submits a notice in writing to the BlackRock Manager objecting to the implementation of, material change in, or continuation of the arrangement, the Client Plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account or fund, without penalty to the Client Plan, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a Client Plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a Client Plan electing to withdraw; and

(iii) In the case of a Client Plan whose assets are proposed to be invested in the account or fund subsequent to the implementation of the compensation arrangement and which has not authorized the arrangement in the manner described in Sections III.L.4.(f)(i) and (ii), the Client Plan's investment in the account or fund shall be authorized in the manner described in Section III.L.4.(d)(i).

M. To-Be-Announced Trades (TBAs) of GNMA, FHLMC, FarmerMac or FNMA Mortgage-Backed Securities With an MPS Counterparty

Relief under Section I of this exemption is available for trades (purchases and sales) on a principal basis of mortgage-backed Securities issued by FHLMC, FNMA, FarmerMac or guaranteed by GNMA and meeting the definition of ''guaranteed governmental mortgage pool certificate'' in 29 CFR 2510.3–101(i) with an MPS on a TBA basis, including, when applicable, delivery of the underlying Securities to a Client Plan, provided that:

1. The Covered Transactions under this Section III.M. are a result of the Three Quote Process; provided that, solely for purposes of this Section III.M.1., firm quotes under the Three Quote Process may be obtained on ''comparable Securities,'' as described below, when firm quotes with respect to the applicable TBA transactions are not reasonably obtainable;

2. With regard to purchases of FHLMC, FarmerMac and FNMA mortgage-backed Securities on a TBA basis, (i) the BlackRock Manager makes a determination that such Securities are of substantially similar credit quality as GNMA guaranteed governmental mortgage pool certificates, (ii) the ECO (in regular consultation with and under the supervision of the IM) monitors the credit spread between GNMA and FHLMC/FNMA/FarmerMac mortgage-backed Securities, and (iii) each of the ECO and the IM (independently) has the authority and responsibility to determine whether purchases of FHLMC, FarmerMac and/or FNMA mortgage-backed Securities on a TBA basis should not be permitted due to such credit spread, and such authority and responsibility is reflected in the EPPs; and

3. With regard to possible delivery of underlying Securities to Client Plans, as

opposed to cash settlement, the ECO Function approves any such delivery in advance.

For purposes of Section III.M.1., ''comparable Securities'' are Securities that: (a) Are issued and/or guaranteed by the same agency, (b) have the same coupon, (c) have a principal amount at least equal to but no more than two percent (2%) greater than the Security purchased or sold, (d) are of the same program or class, and (e) either (i) have an aggregate weighted average monthly maturity within a 12-month variance of the Security purchased or sold, but in no case can the variance be more than ten percent (10%) of such aggregate weighted average maturity of the Securities purchased or sold, or (ii) meet some other comparable objective standard containing a range of variance that is no greater than that described in (i) above and that assures that the aging of the Securities is properly taken into account.

N. Foreign Exchange Transactions With an MPS Counterparty

Relief under Section I of this exemption is available for a Foreign Exchange Transaction by a BlackRock Manager on behalf of Client Plans with an MPS as counterparty provided that:

1. (a) The Foreign Exchange Transaction is as a result of the Three Quote Process; or (b) if the total net amount of the Foreign Exchange Transaction on behalf of Client Plans by BlackRock Managers is greater than $1 million, the exchange rate is within 0.5% above or below the Interbank Rate as represented to the BlackRock Managers by the MPS;

2. The Foreign Exchange Transactions with an MPS counterparty only involve currencies of countries that are classified as ''developed'' or ''emerging'' markets by a third party Index provider that divides national economies into ''developed,'' ''emerging'' and ''frontier'' markets. The Index provider shall be selected by BlackRock, provided, however, the IM shall have the right to reject the Index provider in its sole discretion at any time; and

3. Each Foreign Exchange Transaction complying with Section III.N.1.(b) must be set forth in the applicable quarterly reports of the ECO to the IM.

O. Agency Execution of Equity and Fixed Income Securities Trades and Related Clearing as Described in PTE 86–128, Including Agency Cross Trades, When the Broker Is an MPS

Relief under Section I of this exemption is available for transactions in Securities described in Section II of Prohibited Transaction Exemption 86–128, as amended [8] (PTE 86–128), as if BlackRock Managers and MPS broker-dealers were ''affiliates'' as defined in Section I.(b) of PTE 86–128, provided the following conditions are satisfied:

1. The MPS is selected to perform Securities brokerage services for Client Plans pursuant to the normal brokerage placement practices, policies and procedures of the BlackRock Manager designed to ensure best execution.

2. The conditions of PTE 86–128 set forth in the following sections of that exemption must be complied with: Section III(e); Section III(f); Section III(g)(2); and Section III(h); provided, however, that, for purposes of Section III(e), Section III(f) and Section III(g)(2) of PTE 86–128, the ECO Function is the ''authorizing fiduciary'' referred to therein; and the ECO has the authority to terminate the use of the MPS as broker-dealer without penalty to Client Plans at any time; and provided further that the first sentence of Section III(h) of PTE 86–128 is amended for purposes of this Section III.O.2. to provide as follows: ''A trustee (other than a nondiscretionary trustee) may only engage in a covered transaction with a plan that has total net assets with a value of at least $50 million and in the case of a Pooled Fund, the $50 million requirement will be met if fifty percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by investors having total net assets with a value of at least $50 million.''

3. With respect to agency cross transactions described in Section III(g) of PTE 86–128 that are being effected or executed by an MPS broker, (i) neither the MPS broker effecting or executing the agency cross transaction nor any member of the same MPS Group as the MPS broker effecting or executing the agency cross transaction may have discretionary authority to act on behalf of, and/or provide investment advice to another party to the agency cross transaction which is a seller when the Client Plan is a buyer, or which is a buyer, when the Client Plan is a seller (Another Party), and (ii), neither the BlackRock Manager nor the trader for the BlackRock Manager instituting the transaction for the Client Plan may have knowledge that a BlackRock Entity has discretionary authority and/or provides investment advice to Another Party to the agency cross transaction.

4. The exceptions in Sections IV(a), (b), and (c) of PTE 86–128 are applicable to this exemption.

[8] 51 FR 41686 (Nov. 18, 1986), as amended, 67 FR 64137 (Oct. 17, 2002).

P. Use by BlackRock Managers of Exchanges and Automated Trading Systems on Behalf of Client Plans

Relief under Section I of this exemption is available for the direct or indirect use by, or directing of trades to, U.S. and non-U.S. exchanges or U.S. Automated Trading Systems (ATS) in which one or more MPSs have an ownership interest by BlackRock Managers for Client Plans, if either:

1. No one MPS (together with other members of the same MPS Group) has (i) a greater than ten percent (10%) ownership interest in the exchange or ATS or (ii) the BlackRock Managers do not know the level of such ownership interest; or

2. If a BlackRock Manager knows that an MPS (together with other members of the same MPS Group) has an ownership interest that is greater than ten percent (10%) but not greater than twenty percent (20%) in the exchange or ATS,

(a) The ECO makes a determination, summarized in the ECO quarterly report, that there is no reason for a BlackRock Manager or all BlackRock Managers to discontinue such direct or indirect use of or the directing of trades to any such exchange or ATS on the basis that the amount of use or the volume of trades is unwarranted or not in the interests of the Client Plans and their participants and beneficiaries, and does not make a determination that a BlackRock Manager or all BlackRock Managers must discontinue such direct or indirect use of or the directing of trades to any such exchange or ATS on the basis that the amount of use or the volume of trades is unwarranted or not in the interests of the Client Plans and their participants and beneficiaries. The IM may request any additional information relating to any such determination summarized in the ECO quarterly report and may, after consultation with the ECO, make a determination that a BlackRock Manager or all BlackRock Managers must discontinue such direct or indirect use of or the directing of trades to any such exchange or ATS on the basis that the amount of use or the volume of trades is unwarranted or not in the interests of the Client Plans and their participants and beneficiaries;

(b) The price and compensation associated with any purchases or sales utilizing such exchange or ATS are not greater than the price and compensation associated with an arm's length transaction with an unrelated party; and

(c) All such exchanges and ATSs shall be situated within the jurisdiction of the U.S. District Courts and regulated by a U.S. federal regulatory body or a U.S.

federally approved self-regulatory body, provided that this condition shall not apply to the direct or indirect use of or the directing of trades to an exchange in a country other than the United States which is regulated by a government regulator or a government approved self-regulatory body in such country and which involves trading in Securities (including the lending of Securities) or futures contracts.

Q. Purchases in the Secondary Market of Common and Preferred Stock Issued by an MPS by BlackRock Managers for Client Plans Invested in an Index Account or Fund, or a Model-Driven Account or Fund

Relief under Section I of this exemption is available for the purchase in the secondary market of common or preferred stock issued by an MPS by BlackRock Managers for Client Plans invested in an Index Account or Fund, or a Model-Driven Account or Fund provided that:

1. Such purchase is for the sole purpose of maintaining quantitative conformity with the weight of such Securities prescribed by the relevant Index, for Index Accounts or Funds, or the weight of such Securities prescribed by the relevant Model, for Model-Driven Accounts or Funds, and such purchase is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a de minimis amount.

2. Such purchase is not made from the issuing MPS.

3. Notwithstanding Section III.Q.2., BlackRock Managers may rely on other exemptive relief when acquiring stock of an MPS for Client Plans through an MPS broker, including the issuing MPS.

R. Purchase in the Secondary Market of Common and Preferred Stock Issued by an MPS by BlackRock Managers for Client Plans Invested in an Other Account or Fund

Relief under Section I of this exemption is available for the purchase in the secondary market of common or preferred stock issued by an MPS by BlackRock Managers for Client Plans invested in an Other Account or Fund provided that:

1. Such purchase is not made from the issuing MPS.

2. Notwithstanding Section III.R.1., BlackRock Managers may rely on other exemptive relief when acquiring stock of an MPS for Client Plans under this Section III.R. through an MPS broker, including the issuing MPS.

3. As a consequence of a purchase of MPS stock, the class of stock purchased does not constitute more than five percent (5%) of the Other Account or Fund. In the case of a Pooled Fund, the class of stock purchased and attributed to each Client Plan does not exceed five percent (5%) of such Client Plan's proportionate interest in the Pooled Fund.

4. Aggregate daily purchases of a class of MPS stock for Client Plans do not exceed the greater of (i) fifteen percent (15%) of the aggregate average daily trading volume (ADTV) for the previous ten (10) trading days, or (ii) fifteen percent (15%) of trading volume on the date of the purchase. These volume limitations must be met on a portfolio manager by portfolio manager basis unless purchases are coordinated among portfolio managers, in which case the limitations are applied to the coordinated purchase.[9] Any coordinated purchases of the same class of MPS stock in the secondary market for Index Accounts or Funds or for Model-Driven Accounts or Funds must be taken into account when applying these ADTV limitations on purchases for an Other Account or Fund; provided, however, if coordinated purchases for Index Accounts or Funds, or for Model-Driven Accounts or Funds, would cause the fifteen percent (15%) limitation to be exceeded, BlackRock Managers can nonetheless acquire for Other Accounts or Funds up to the greater of five percent (5%) of ADTV for the previous ten (10) trading days or five percent (5%) of trading volume on the day of the Covered Transaction. For purposes of this Section III.R.4., cross trades of MPS equity Securities which comply with an applicable statutory or administrative prohibited transaction exemption are not taken into account.

5. The ECO Function monitors the volume limits on purchases of MPS stock described in Section III.R.4. and provides a monthly report to the IM with respect to such purchases and limits. The IM shall impose lower volume limitations and take other appropriate action with respect to such purchases if the IM determines on the basis of these reports by the ECO and publicly available information materially related to the trading of the Securities of an MPS on its primary listing exchange (or market) that the purchases described have a material positive impact on the market price for such Securities.

S. Purchases, Sales and Holdings by BlackRock Managers for Client Plans of Commercial Paper Issued by ABCP Conduits, When an MPS Has One or More Roles

Relief under Section I of this exemption is available for the purchase and sale, including purchases from or sales to an MPS, and the holding by BlackRock Managers acting on behalf of Client Plans of commercial paper issued by an ABCP Conduit with respect to which an MPS acts as seller, placement agent, and/or in some continuing capacity such as program administrator, provider of liquidity or provider of credit support, provided that:

1. (a) The Client Plan is not an MPS Plan of the MPS with whom the purchase or sale takes place, or an MPS Plan of another MPS member of the same MPS Group as such MPS; and (b) the Client Plan is not an MPS Plan of an MPS which is acting in a continuing capacity, or an MPS Plan of another MPS member of the same MPS Group as such MPS; provided that, the conditions set forth in clauses (a) and (b) of this Section III.S.1. will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption;

2. Neither the MPS involved in the Covered Transaction nor any member of the same MPS Group as the MPS involved in such Covered Transaction has discretionary authority or control with respect to Client Plan assets involved in the Covered Transaction under this Section III.S.; provided that, this condition will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption;

3. The commercial paper has a stated maturity date of nine months or less from the date of issue, exclusive of days of grace, or is a renewal of an issue of commercial paper the maturity of which is likewise limited;

4. At the time it is acquired, the commercial paper is ranked in the highest rating category by at least one of the Rating Organizations;

5. If the seller or purchaser of the ABCP commercial paper is an MPS, purchases and sales are made pursuant to the Three Quote Process, provided that, for purposes of this Section III.S.5., firm quotes on comparable short-term money market instruments rated in the same category may be used for purposes of the Three Quote Process; and

6. If an MPS performs a continuing role and there is a default, the taking or refraining from taking of any action by

[9] For example, if two or more portfolio managers send their purchase orders to the same trading desk and the traders on that trading desk coordinate the purchases of the same MPS equity Securities, the limitations apply to the trading desk; if two or more portfolio managers or two or more trading desks are coordinating purchases of MPS equity Securities, the limitations are applied across the group of portfolio managers or traders who are coordinating the purchase orders.

the responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the IM.

No BlackRock Entity is to be regarded as an affiliate of any MPS for purposes of the Covered Transactions set forth in this Section III.S.

T. Purchase, Holding and Disposition by BlackRock Managers for Client Plans of Shares of Exchange-Traded Open-End Investment Companies Registered Under the 1940 Act (ETF) Managed by BlackRock Managers

Relief under Section I of this exemption is available for the purchase, holding and disposition by BlackRock Managers for Client Plans of shares of an ETF managed by a BlackRock Manager provided that:

1. The BlackRock Manager purchases such ETF shares from or through a person other than an MPS or a BlackRock Entity; and

2. No purchase is exempt under Section I of this exemption if the BlackRock Manager portfolio manager acting for the Client Plan knows or should know that the shares to be acquired for Client Plans are Creation Shares, or that the purchase for Client Plans will result in new Creation Shares.

U. Purchase, Holding and/or Disposition of BlackRock Equity Securities in the Secondary Market by BlackRock Managers for an Index Account or Fund, or a Model-Driven Account or Fund, Including Buy-Ups [10]

Relief under Section I of this exemption is available for the purchase, holding and disposition of common or preferred stock issued by BlackRock in the secondary market by BlackRock Managers for Client Plans in an Index Account or Fund, or in a Model-Driven Account or Fund provided that:

1. The acquisition, holding and disposition of the BlackRock Securities is for the sole purpose of maintaining quantitative conformity with the weight of such Securities prescribed by the relevant Index, for Index Accounts or Funds, or the weight of such Securities prescribed by the relevant Model, for Model-Driven Accounts or Funds, and such purchase is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a *de minimis* amount.

2. Any acquisition of BlackRock Securities does not involve any agreement, arrangement or understanding regarding the design or operation of the account or fund acquiring the BlackRock Securities which is intended to benefit BlackRock or any party in which BlackRock may have an interest.

3. With respect to an acquisition of BlackRock Securities by such an account or fund which constitutes a Buy-Up:

(a) The acquisition is made on a single trading day from or through one broker-dealer, which broker-dealer is not an MPS or a BlackRock Entity; provided, however, that if the volume limitation in Section III.U.3.(d) below cannot be satisfied in a single trading day, the acquisition will be completed in as few trading days as possible in compliance with such volume limitation and such trades will be reviewed by the ECO and reported to the IM;

(b) Based upon the best available information, the acquisition is not the opening transaction of a trading day and is not made in the last half hour before the close of the trading day;

(c) The price paid by the BlackRock Manager is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from broker-dealers who are not MPSs or BlackRock Entities;

(d) Aggregate daily purchases do not exceed fifteen percent (15%) of aggregate average daily trading volume for the Security, as determined by the greater of (i) the trading volume for the Security occurring on the applicable Recognized Securities Exchange and/or Automated Trading System on the date of the transactions, or (ii) the aggregate average daily trading volume for the Security occurring on the applicable Recognized Securities Exchange and/or Automated Trading System for the previous ten (10) trading days, both based on the best information reasonably available at the time of the transaction. These volume limitations are applied on a portfolio manager by portfolio manager basis unless purchases of BlackRock Securities are coordinated by the portfolio managers or trading desks, in which case the limitations are aggregated for the coordinating portfolio managers or trading desks. Provided further, if BlackRock, without Client Plan direction or consent, initiates a new Index Account or Fund or Model-Driven Account or Fund on its own accord, with BlackRock Securities included therein, the volume restrictions for such new account or fund shall be determined by aggregating all portfolio managers purchasing for such new account of fund. Cross trades of BlackRock Securities which comply with an applicable statutory or administrative prohibited transaction exemption are not included in the amount of aggregate daily purchases to which the limitations of this Section III.U. apply;

(e) All purchases and sales of BlackRock Securities occur either (i) on a Recognized Securities Exchange, (ii) through an Automated Trading System operated by a broker-dealer that is not a BlackRock Entity and is either registered under the 1934 Act, and thereby subject to regulation by the Securities and Exchange Commission, or subject to regulation and supervision by the Securities and Futures Authority of the UK or another applicable regulatory authority, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an Automated Trading System that is operated by a Recognized Securities Exchange, pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(f) The ECO designs acquisition procedures for BlackRock Managers to follow in Buy-Ups, which the IM approves in advance of the commencement of any Buy-Up, and the ECO Function monitors BlackRock Manager's compliance with such procedures.

V. Acquisition by BlackRock Managers of Financial Guarantees, Indemnities and Similar Protections for Client Plans from MPSs

Relief under Section I of this exemption is available for the provision by an MPS of a financial guarantee, indemnification arrangement or similar instrument or arrangement providing protection to a Client Plan against possible losses or risks provided that:

1. The terms of the arrangement (including the identity of the provider) are approved by a fiduciary of the Client Plan which is independent of the MPS providing such protection and of BlackRock;

2. The compensation owed the MPS under the arrangement is paid by a BlackRock Entity and not paid out of the assets of the Client Plan;

3. In the event a Client Plan or the ECO concludes an event has occurred which should trigger the obligations of the MPS under the arrangement, and the MPS disagrees to any material extent, the IM determines the steps the BlackRock Manager must take to protect the interests of the Client Plan; and

[10] BlackRock requested such relief for the avoidance of any issue about the necessity for such relief in particular circumstances; the Department is not opining on the need for such relief herein.

4. The MPS providing the arrangement is capable of being sued in United States courts, has contractually agreed to be subject to litigation in the United States with respect to any matter relating to this Section III.V., and has sufficient assets in the United States to honor its commitments under the arrangement.

W. Purchase of a Portion or All of a Loan to an Entity Which Is Not an MPS and Is Not a BlackRock Entity From an MPS or Other Arranger and the Holding Thereof by BlackRock Managers Where an MPS Is an Arranger, and/or an MPS Has an Ongoing Function Regarding Such Loan

Relief under Section I of this exemption is available for the purchase from an MPS or other Arranger by BlackRock Managers on behalf of Client Plans of all or a portion of a Loan and the holding thereof, where an MPS is an Arranger and/or an MPS has an ongoing function in relation to the Loan, provided that:

1. The BlackRock Manager obtains an assignment of the Loan or portion thereof on behalf of the Client Plan, which assignment provides for the Client Plan to become the lender of record, and the transfer of title, voting rights and all other applicable rights to such Client Plan (the Loan or the portion thereof, an ''Assigned Loan'');

2. The borrower under the Assigned Loan is not an MPS or a BlackRock Entity; [11]

3. The Assigned Loan is purchased prior to the end of the first day on which any sales are made pursuant to that offering, at a price that is not more than the price paid by each other purchaser of Assigned Loans in that offering or in any concurrent offering of the Assigned Loans, except that Assigned Loans may be purchased at a price that is not more than the price paid by each other purchaser of the Assigned Loans in that offering or in any concurrent offering of the Assigned Loans and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable Assigned Loans offered subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the Assigned Loans being purchased;

4. The Assigned Loan is offered pursuant to a selling agreement or arrangement under which the Arrangers are committed to make the full amount of the loan commitment to the borrower;

5. The borrower under the Assigned Loan to be purchased pursuant to this exemption must have been in continuous operation for not less than three (3) years, including the operation of any predecessors, unless:

(a) The Assigned Loan has a Facility Rating in one of the four highest rating categories by a Rating Organization; provided that none of the Rating Organizations provides a Facility Rating in a category lower than the fourth highest rating category with respect to the Assigned Loan; provided further that if the Assigned Loan lacks a Facility Rating, the Assigned Loan shall have a Borrower Rating that meets the ratings standards set forth in this subsection; or

(b) The Assigned Loan is fully guaranteed by a guarantor that has been in continuous operation for not less than three (3) years, including the operation of any predecessors, provided that such guarantor has issued Securities registered under the 1933 Act; or if such guarantor has issued Securities which are exempt from such registration requirement, such guarantor has been in continuous operation for not less than three (3) years, including the operation of any predecessors, and such guarantor is:

(i) A bank,

(ii) An issuer of Securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(iii) An issuer of Securities that are the subject of a distribution and are of a class which is required to be registered under Section 12 of the 1934 Act, and are issued by an issuer that has been subject to the reporting requirements of Section 13 of the 1934 Act for a period of at least ninety (90) days immediately preceding the sale of such Loans and that has filed all reports required to be filed hereunder with the SEC during the preceding twelve (12) months.

6. The aggregate amount of an Assigned Loan being purchased in a Loan Offering pursuant to this exemption by the BlackRock Manager with: (i) The assets of all Client Plans; and (ii) the assets, calculated on a pro rata basis, of all Client Plans investing in Pooled Funds managed by the BlackRock Manager; and (iii) the assets of plans to which the BlackRock Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c) does not exceed:

(a) Thirty five percent (35%) of the total amount of the Assigned Loan being purchased in the Loan Offering, if the Facility Rating of such Assigned Loan is, or, if such Assigned Loan does not have a Facility Rating, the borrower thereunder has a Borrower Rating, in one of the four highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations provides a Facility Rating for such Assigned Loan or, if such Assigned Loan does not have a Facility Rating, a Borrower Rating, in a category lower than the fourth highest rating category; or

(b) Twenty five percent (25%) of the total amount of the Assigned Loan being purchased in the Loan Offering, if the Facility Rating of such Assigned Loan is, or, if such Assigned Loan does not have a Facility Rating, the borrower thereunder has a Borrower Rating, in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations provides a Facility Rating for such Assigned Loan or, if such Assigned Loan does not have a Facility Rating, a Borrower Rating, in a category lower than the sixth highest rating category; and provided that

(c) The assets of any single Client Plan (and the assets of any Client Plans investing in Pooled Funds) may not be used to purchase any Assigned Loan if the Facility Rating of such Assigned Loan is, or, if such Assigned Loan does not have a Facility Rating, the borrower thereunder has a Borrower Rating that is lower than the sixth highest rating category by any of the Rating Organizations.

7. Notwithstanding the percentage of a Loan Offering permitted to be acquired, as set forth in Subsections 6(a) or (b) of this Section III.W., the amount of Assigned Loans in a Loan Offering purchased pursuant to this exemption by the BlackRock Manager on behalf of any single Client Plan, either individually or through investment, calculated on a pro rata basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Assigned Loans being offered in such Loan Offering, provided that a Sub-Advised Pooled Fund as a whole may purchase up to three percent (3%) of a Loan Offering.

8. The aggregate amount to be paid by any single Client Plan in purchasing any Assigned Loans which are the subject of this exemption, including any amounts paid by any Client Plan in purchasing such Assigned Loans through a Pooled Fund, calculated on a pro rata basis, does not exceed three percent (3%) of the fair market value of the net assets of

[11] Proceeds of the Assigned Loan may be used by the relevant borrower to repay a debt owed to an MPS, provided that the conditions set forth in Section III.J. of this exemption are satisfied (for these purposes and for purposes of such conditions the Assigned Loan shall be deemed to be a Security).

such Client Plan, as of the last day of the most recent fiscal quarter of such Client Plan prior to such transaction, provided that a Sub-Advised Pooled Fund as a whole may pay up to one percent (1%) of fair market value of its net assets in purchasing such Assigned Loans.

9. The BlackRock Manager has an opportunity to review the material terms of the Assigned Loan prior to agreeing to acquire the Assigned Loan, as well as review information which information may be obtained from one or more web-based sites (e.g., Intralinks) maintained for potential investors and lenders for this purpose. Information available to be reviewed shall include information regarding the borrower and draft loan documents (e.g., credit agreement, confidential information statement).

10. The Covered Transactions in this Section III.W. are not part of an agreement, arrangement, or understanding designed to benefit any BlackRock Entity or MPS.

11. Each Client Plan engaging in Covered Transactions pursuant to this Section III.W. shall have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in the purchase of an Assigned Loan which is the subject of this exemption, each Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund shall have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan. Notwithstanding the foregoing, if each Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund does not have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan, the $100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by investors, each of which have total net assets of at least $100 million in Securities of issuers that are not affiliated with such investor, and the Pooled Fund itself qualifies as a QIB.

For purposes of the net asset requirements described in this Section III.W., where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in ERISA section 407(d)(7), the $100 Million Net Asset Requirement may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

12. No more than twenty percent (20%) of the assets of a Pooled Fund, at the time of a Covered Transaction, are comprised of assets of In-House Plans for which the BlackRock Manager, or a BlackRock Entity exercises investment discretion.

13. The BlackRock Manager must be a QPAM, and, in addition to satisfying the requirements for a QPAM under section VI(a) of PTE 84–14, the BlackRock Manager must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

14. The conditions of Subsections IV.A.11. and 12. are satisfied with respect to the Covered Transactions described in this Section III.W.

15. With respect to any Assigned Loan under which an MPS has an ongoing function, such as an administrative agent or collateral agent, the taking of or refraining from taking of any action by the responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the IM.

Section IV: Affiliated Underwritings and Affilliated Servicing

A. Affiliated Underwritings

1. The Securities to be purchased are either:

(a) Part of an issue registered under the 1933 Act, or, if Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(i) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States,

(ii) Are issued by a bank,

(iii) Are exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or

(iv) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act, and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the SEC during the preceding twelve (12) months; or

(b) Part of an issue that is an Eligible Rule 144A Offering. Where the Eligible Rule 144A Offering of the Securities is of equity Securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum; or

(c) Municipal bonds taxable by the United States, including Build America Bonds created under section 54AA of the Code or successor thereto, under which the United States pays a subsidy to the state or local government issuer, but not including Build America Bonds which provide a tax credit to investors.

2. The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that:

(a) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(b) If such Securities are debt Securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt Securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

3. The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if:

(a) Such Securities are purchased by others pursuant to a rights offering; or

(b) Such Securities are offered pursuant to an over-allotment option.

4. The issuer of the Securities to be purchased pursuant to this exemption must have been in continuous operation for not less than three (3) years, including the operation of any predecessors, unless the Securities to be purchased:

(a) Are non-convertible debt Securities rated in one of the four highest rating categories by a Rating Organization; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(b)(i) Are debt Securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(ii) Are municipal bonds taxable by the United States, including Build America Bonds created under section 54AA of the Code or successor thereto, under which the United States pays a subsidy to the state or local government issuer, but not including Build America Bonds which provide a tax credit to investors; or

(c) Are debt Securities which are fully guaranteed by a guarantor that has been in continuous operation for not less than three (3) years, including the operation of any predecessors, provided that such guarantor has issued other Securities registered under the 1933 Act; or if such guarantor has issued other Securities which are exempt from such registration requirement, such guarantor has been in continuous operation for not less than three (3) years, including the operation of any predecessors, and such guarantor is:

(i) A bank;

(ii) An issuer of Securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(iii) An issuer of Securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act, and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed hereunder with the SEC during the preceding twelve (12) months.

5. The aggregate amount of Securities of an issue purchased, pursuant to this exemption, by the BlackRock Manager with: (i) The assets of all Client Plans; and (ii) the assets, calculated on a *pro rata* basis, of all Client Plans investing in Pooled Funds managed by the BlackRock Manager; and (iii) the assets of plans to which the BlackRock Manager renders investment advice within the meaning of 29 CFR 2510.3 21(c) does not exceed:

(a) Ten percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity Securities;

(b) Thirty five percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are Asset-Backed Securities rated in one of the three highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the third highest rating category;

(c) Thirty five percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt Securities rated in one of the four highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(d) Twenty five percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt Securities (excluding Asset-Backed Securities) rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(e) The assets of any single Client Plan (and the assets of any Client Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt Securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(f) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Subsections A.5.(a)–(d) of this Section IV., the amount of Securities in any issue (whether equity or debt Securities or Asset-Backed Securities) purchased, pursuant to this exemption, by the BlackRock Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, provided that a Sub-Advised Pooled Fund as a whole may purchase up to three percent (3%) of an issue; and

(g) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section IV.A.5.(a)–(d) and (f), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to QIBs; plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

6. The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this exemption, including any amounts paid by any Client Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan, as of the last day of the most recent fiscal quarter of such Client Plan prior to such transaction, provided that a Sub-Advised Pooled Fund as a whole may pay up to one percent (1%) of fair market value of its net assets in purchasing such Securities.

7. The Covered Transactions are not part of an agreement, arrangement, or understanding designed to benefit any BlackRock Entity or MPS.

8. Each Client Plan shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in Covered Transactions involving an Eligible Rule 144A Offering, each Client Plan shall have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in an Affiliated Underwriting, each Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan in a Pooled Fund other than a Sub-Advised Pooled Fund does not have total net assets with a value of at least $50 million, the $50 Million Net Asset Requirement will be met, if fifty percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by investors, each of which has total net assets with a value of at least $50 million.

For purposes of a Pooled Fund engaging in an Affiliated Underwriting involving an Eligible Rule 144A Offering, each Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund shall have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan. Notwithstanding the foregoing, if each such Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund does not have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan, the $100 Million Net Asset Requirement will be met if fifty percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by investors, each of which have total net assets of at least $100 million in Securities of issuers that are not affiliated with such investor, and the Pooled Fund itself qualifies as a QIB.

For purposes of the net asset requirements described, above in Section IV.A.8., where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in ERISA section 407(d)(7), the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100

Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

9. No more than twenty percent (20%) of the assets of a Pooled Fund, at the time of a Covered Transaction, are comprised of assets of In-House Plans for which the BlackRock Manager, or a BlackRock Entity exercises investment discretion.

10. The BlackRock Manager must be a QPAM, and, in addition to satisfying the requirements for a QPAM under section VI(a) of PTE 84–14, the BlackRock Manager must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

11. The BlackRock Manager maintains, or causes to be maintained, for a period of six (6) years from the date of any Covered Transaction such records as are necessary to enable the persons described below in Section IV.A.12.(a) to determine whether the conditions of this exemption have been met, except that:

(a) No party in interest with respect to a plan which engages in the Covered Transactions, other than the BlackRock Manager, shall be subject to a civil penalty under ERISA section 502(i) or the taxes imposed by Code sections 4975(a) and (b), if such records are not maintained, or not available for examination as required below by Section IV.A.12.(a); and

(b) A separate prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the BlackRock Manager, such records are lost or destroyed prior to the end of the six-year period.

12. (a) Except as provided below, in Section IV.A.12.(b), and notwithstanding the provisions of subsections (a)(2) and (b) of ERISA section 504, the records referred to, above, in Section IV.A.11. are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC;

(ii) Any fiduciary of any Client Plan that engages in the Covered Transactions, or any duly authorized employee or representative of such fiduciary;

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Client Plan that engages in the Covered Transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a Client Plan that engages in the Covered Transactions, or duly authorized employee or representative of such participant or beneficiary;

(b) None of the persons described in Section IV.A.12.(a)(ii) through (iv) shall be authorized to examine trade secrets of the BlackRock Manager, or commercial or financial information which is privileged or confidential; and

(c) Should the BlackRock Manager refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section IV.A.12.(b), the BlackRock Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

B. Affiliated Servicing

1. The Securities are CMBS that are rated in one of the three highest rating categories by a Rating Organization; provided that none of the Rating Organizations rates such Securities in a category lower than the third highest rating category.

2. The purchase of the CMBS meets the conditions of an applicable Underwriter Exemption.

3. (a) The aggregate amount of CMBS of an issue purchased, pursuant to this exemption, by the BlackRock Manager with:

(i) The assets of all Client Plans; and

(ii) The assets, calculated on a pro rata basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the BlackRock Manager; and

(iii) The assets of plans to which the BlackRock Manager renders investment advice, within the meaning of 29 CFR Sec. 2510.3–21(c), does not exceed thirty five percent (35%) of the total amount of the CMBS being offered in an issue.

(b) Notwithstanding the percentage of CMBS of an issue permitted to be acquired, as set forth in Section IV.B.3.(a) of this exemption, the amount of CMBS in any issue purchased, pursuant to this exemption, by the BlackRock Manager on behalf of any single Client Plan, either individually or through investment, calculated on a pro rata basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such CMBS being offered in such issue, and;

(c) If purchased in an Eligible Rule 144A Offering, the total amount of the CMBS being offered for purposes of determining the percentages described in Section IV.B.3.(a), is the total of:

(i) The principal amount of the offering of such class of CMBS sold by underwriters or members of the selling syndicate to QIBs; plus

(ii) The principal amount of the offering of such class of CMBS in any concurrent public offering.

4. The aggregate amount to be paid by any single Client Plan in purchasing any CMBS which are the subject of this exemption, including any amounts paid by any Client Plan in purchasing such CMBS through a Pooled Fund, calculated on a pro rata basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan, as of the last day of the most recent fiscal quarter of such Client Plan prior to such transaction.

5. The Covered Transactions under this Section IV.B. are not part of an agreement, arrangement, or understanding designed to benefit any MPS.

6. The requirements of Sections IV.A.8. through 12. are met.

Section V: Correction Procedures

A. 1. The ECO shall monitor Covered Transactions and shall determine whether a particular Covered Transaction constitutes a Violation. The ECO shall notify the IM within five (5) business days following the discovery of any Violation.

2. The ECO shall make an initial determination as to how to correct a Violation and place the conclusion of such determination in writing, with such conclusion disclosed to the IM within five (5) business days of the placing of the conclusion of such determination in writing. Following the initial determination, the ECO must keep the IM apprised on a current basis of the process of correction and must consult with the IM regarding each Violation and the appropriate form of correction. The ECO shall report the correction of the Violation to the IM within five (5) business days following completion of the correction. For purposes of this Section V.A.2., ''correction'' must be consistent with ERISA section 502(i) and Code section 4975(f)(5).

3. The IM shall determinate whether it agrees that the correction of a Violation by the ECO is adequate and shall place the conclusion of such determination in writing, and, if the IM does not agree with the adequacy of the correction, the IM shall have the authority to require additional corrective actions by BlackRock.

4. A summary of Violations and corrections of Violations will be in the

IM's annual compliance report as described in Section II.E.12.

B. Special Correction Procedure

1. If a Covered Transaction which would otherwise constitute a Violation is corrected under this ''Special Correction Procedure,'' such Covered Transaction shall continue to be exempt under Section I of this exemption.

2. (a) The Special Correction Procedure is a complete correction of the Violation no later than fourteen (14) business days following the date on which the ECO submits the quarterly report to the IM for the quarter in which the Covered Transaction first would become a non-exempt prohibited transaction by reason of constituting a Violation if not for this Section V.B.

(b) Solely for purposes of the Special Correction Procedure, ''correction'' of a Covered Transaction which would otherwise be a Violation means either:

(i) Restoring the Client Plan to the position it would have been in had the conditions of the exemption been complied with;

(ii) correction consistent with ERISA section 502(i) and Code section 4975(f)(5); or

(iii) correction consistent with the Voluntary Fiduciary Correction Program.[12]

(c) Other than with respect to the definition of ''correction'' specified above, when utilizing the Special Correction Procedure the ECO and the IM shall comply with Section V.A.

Section VI: Definitions [13]

A. ''1933 Act'' means the Securities Act of 1933, as amended.

B. ''1934 Act'' or ''Exchange Act'' means the Securities Exchange Act of 1934, as amended.

C. ''1940 Act'' means the Investment Company Act of 1940, as amended.

D. ''$50 Million Net Asset Requirement'' shall have the meaning set forth in Section IV.A.8. of this exemption.

E. ''$100 Million Net Asset Requirement'' shall have the meaning set forth in Section IV.A.8. of this exemption.

F. ''ABCP Conduit'' means a special purpose vehicle that acquires assets from one or more originators and issues commercial paper to provide funding to the originator(s). Such vehicles are typically administered by a bank, but is not required to be administered by a bank, which provides liquidity support (standing ready to purchase the conduit's commercial paper if it cannot be rolled over) and/or credit support (committing to cover losses in the event of default). The program administrator also typically acts as placement agent for the commercial paper, sometimes together with one or more other placement agents. Commercial paper issued by such a conduit may be purchased directly from the program administrator or other placement agent, or traded on the secondary market with another broker-dealer making a market in the Securities.

G. ''Acquisition'' means the acquisition by BlackRock of Barclays Global Investors UK Holdings, Ltd. and its subsidiaries on December 1, 2009.

H. ''Affiliate'' of another person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative (as defined in section 3(15) of ERISA) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director, partner or employee.

I. ''Arranger'' means a sophisticated financial institution, such as a commercial or investment bank, regularly engaged in structuring commercial loans.

J. ''Asset-Backed Securities'' means Securities which are pass-through certificates or trust certificates characterized as equity pursuant to 29 CFR 2510.3–101 that represent a beneficial ownership interest in the assets of an issuer which is a trust, with any such trust limited to (1) a single or multi-family residential or commercial mortgage investment trust, or (2) a motor vehicle receivable investment trust, and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of the trust, the corpus or assets of which consist solely or primarily of secured obligations that bear interest or are purchased at a discount. For purposes of Section IV.A. of this exemption, excluding Section IV.A.5., Asset-Backed Securities are treated as debt Securities.

K. ''Assigned Loan'' has the meaning set forth in Section III.W.1. of this exemption.

L. ''Authorizing fiduciary'' has the meaning set forth in Section III.M.4(d)(i) of this exemption.

M. ''Automated Trading System'' or ''ATS'' means an electronic trading system, ECN or electronic clearing network or similar venue that functions in a manner intended to simulate a Securities exchange by electronically matching orders from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS (17 CFR part 242.300), as such definition may be amended from time to time, or an ''automated quotation system'' as described in Section 3(a)(51)(A)(ii) of the 1934 Act.

N. ''BlackRock'' means BlackRock, Inc. and any successors thereof.

O. ''BlackRock Entity'' means BlackRock and any entity directly or indirectly, through one or more intermediaries, under the control of BlackRock, and any other entity which subsequently becomes directly or indirectly, through one or more intermediaries, under the control of BlackRock, and successors of the foregoing.

P. ''BlackRock Manager'' means any bank, investment advisor, investment manager directly or indirectly, through one or more intermediaries, under the control of BlackRock, and any other bank, investment advisor, or investment manager which subsequently becomes directly or indirectly, through one or more intermediaries, under the control of BlackRock, and successors of the foregoing, including but not limited to BlackRock Advisors, LLC, BlackRock Financial Management, Inc., BlackRock Capital Management, Inc., BlackRock Institutional Management Corporation, BlackRock International, Ltd., BlackRock Realty Advisors, Inc., BlackRock Investment Management, LLC, BlackRock Fund Advisors, and BlackRock Institutional Trust Company, N.A. and any of the investment advisors and investment manager it controls.

Q. ''Board'' means the Board of Directors of BlackRock.

R. ''Borrower Rating'' means, solely for purposes of Section III.W. of this exemption, a rating assigned by a Rating Organization to a borrowing entity reflecting such borrower's overall capacity and willingness to meet its financial obligations. More specifically, a Borrower's Rating generally refers to the borrower's ability and willingness to meet senior, unsecured obligations.

S. ''Buy-Up'' means an initial acquisition of Securities issued by BlackRock by a BlackRock Manager, if such acquisition exceeds one percent (1%) of the aggregate daily trading volume for such Security, for an Index Account or Fund, or a Model-Driven Account or Fund which is necessary to bring the fund's or account's holdings of such Securities either to its capitalization-weighted or other specified composition in the relevant

[12] PTE 2002–51, 67 FR 70623 (November 25, 2002), as amended, 71 FR 20135 (April 19, 2006).

[13] The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Section headings are for convenience only.

Index, as determined by the organization maintaining such Index, or to its correct weighting as determined by the Model.

T. ''Client Plan'' means any plan subject to ERISA section 406, Code section 4975 or FERSA section 8477(c) for which a BlackRock Manager is a fiduciary as described in ERISA section 3(21), including, but not limited to, any Pooled Fund, MPS Plan, Index Account or Fund, Model-Driven Account or Fund, Other Account or Fund, or In-House Plan, except where specified to the contrary.

U. ''CMBS'' means an Asset-Backed Security with respect to which the assets or corpus of the issuer consist solely or primarily of obligations secured by commercial real property (including obligations secured by leasehold interests on commercial real property).

V. ''Code'' means the Internal Revenue Code of 1986, as amended.

W. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

X. ''Covered Transaction'' means each transaction set forth in Section III by a BlackRock Manager for a Client Plan with, affecting or involving, directly or indirectly, an MPS and/or a BlackRock Entity.

Y. ''Creation Shares'' means new shares in an ETF created by an exchange of a specified basket of Securities and/or cash to the ETF for such new shares of the ETF.

Z. ''ECO Function'' means the ECO and such other BlackRock Entity employees in legal and compliance roles working under the supervision of the ECO in connection with the Covered Transactions. The list of BlackRock Entity employees shall be shared with the IM from time to time, not less than quarterly, and such employees will be made available to discuss the relevant Covered Transactions with the IM to the extent the IM or the ECO deem it reasonably prudent.

AA. ''Electronic Communications Network'' or ''ECN'' means an electronic system described in Rule 600(b)(23) of Regulation NMS under the 1934 Act.

BB. ''Eligible Rule 144A Offering'' shall have the same meaning as defined in SEC Rule 10f-3(a)(4) (17 CFR 270.10f-3(a)(4)) under the 1940 Act.

CC. ''Eligible Securities Depository'' means an eligible securities depository as that term is defined under Rule 17f-7 of the 1940 Act, as such definition may be amended from time to time.

DD. ''EPP Correction'' has the meaning set forth in Section II.C. of this exemption.

EE. ''ERISA'' means the Employee Retirement Income Security Act of 1974, as amended.

FF. ''ETF'' means an exchange-traded open-end investment company registered under the 1940 Act.

GG. ''Exemption Compliance Officer'' or ''ECO'' means an officer of BlackRock or of a BlackRock Entity appointed by BlackRock or such BlackRock Entity, subject to the approval of the IM, who is responsible for compliance with the exemption. The ECO, unless otherwise stated in this exemption, will be responsible for: monitoring all Covered Transactions and reviewing compliance with all of the conditions of the exemption applicable thereto; approving certain Covered Transactions in advance as required by the terms of the exemption; reviewing reports of Covered Transactions and the results of sampling of Covered Transactions; and determining when Covered Transactions transgress the EPPs and/or constitute a Violation.

HH. ''Exemption Polices and Procedures'' or ''EPPs'' means the written policy adopted and implemented by BlackRock for BlackRock Entities that is reasonably designed to ensure compliance with the terms of the exemption. The EPPs must reflect the specific requirements of the exemption, but must also be designed to ensure that the decisions to enter into Covered Transactions on behalf of Client Plans with the MPSs are in the interests of Client Plans and their participants and beneficiaries, including by ensuring to the extent possible that the terms of each Covered Transaction are at least as favorable to the Client Plan as the terms generally available in comparable arm's length transactions with unrelated parties.

II. ''Facility Rating'' means, solely for purposes of Section III.W. of this exemption, a rating assigned by a Rating Organization to a specific loan, note or other financial obligation, a specific class of financial obligations, or a specific financial program within a borrower's capital structure. The rating on a specific loan facility or other issue may reflect positive or negative adjustments relative to the borrower's rating for (1) the presence of collateral, (2) explicit subordination, or (3) any other factors that affect the payment priority, expected recovery, or credit stability of the specific issue.

JJ. ''FarmerMac'' means the Federal Agricultural Mortgage Corporation.

KK. ''FERSA'' means the Federal Employees' Retirement System Act of 1986, as amended.

LL. ''FHLMC'' means the Federal Home Loan Mortgage Corporation.

MM. ''Fixed Income Obligations'' means: (1) Fixed income obligations including structured debt or other instruments characterized as debt pursuant to 29 CFR 2510.3–101, including, but not limited to, debt convertible into equity, certificates of deposit and loans (other than loans described in Section III.W. with respect to which an MPS is an Arranger) and (2) guaranteed governmental mortgage pool certificates within the meaning of 29 CFR 2510.3–101(i). Asset-Backed Securities are not Fixed Income Obligations for purposes of this exemption.

NN. ''FNMA'' means the Federal National Mortgage Association.

OO. ''Foreign Bank'' means an institution that has substantially similar powers to a bank as defined in section 202(a)(2) of the Investment Advisers Act, as amended, has as of the last day of its most recent fiscal year, equity capital which is the equivalent of no less than $200 million, and is subject to:

(1)(a) Registration and regulation, as applicable, under the laws of the United Kingdom, or (b)(i) registration and regulation by a securities commission of a Province of Canada that is a member of the Canadian Securities Administration, and (ii) is subject to the oversight of a Canadian self-regulatory authority; or

(2) Regulation by the relevant governmental banking agency(ies) of a country other than the United States and the regulation and oversight of these banking agencies were applicable to a bank that received: (a) An individual exemption, granted by the Department under section 408(a) of ERISA, involving the loan of Securities by a plan to a bank or (b) a final authorization by the Department to engage in an otherwise prohibited transaction pursuant to PTE 96–62, as amended, involving the loan of Securities by a plan to a bank. On the date this exemption becomes effective, the following countries shall qualify for purposes of this clause (2): United Kingdom, Canada, Germany, Japan, Australia, Switzerland, France, the Netherlands and Sweden.

PP. ''Foreign Broker-Dealer'' means a broker-dealer that has, as of the last day of its most recent fiscal year, equity capital that is the equivalent of no less than $200 million and is:

(1) Registered and regulated under the laws of the United Kingdom;

(2) Registered and regulated by a securities commission of a Province of Canada that is a member of the Canadian Securities Administration, and is subject to the oversight of a Canadian self-regulatory authority; or

(3) Registered and regulated under the relevant Securities laws of a governmental entity of a country other than the United States and such Securities laws and regulation were applicable to a broker-dealer that received: (a) An individual exemption, granted by the Department under section 408(a) of ERISA, involving the loan of Securities by a plan to a broker-dealer or (b) a final authorization by the Department to engage in an otherwise prohibited transaction pursuant to PTE 96–62, as amended, involving the loan of Securities by a plan to a broker-dealer. On the date this exemption becomes effective, the following countries shall qualify for purposes of this clause (2): United Kingdom, Canada, Germany, Japan, Australia, Switzerland, France, the Netherlands and Sweden.

QQ. ''Foreign Collateral'' means:

(1) Securities issued by or guaranteed as to principal and interest by the following Multilateral Development Banks, the obligations of which are backed by the participating countries, including the United States: The International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development and the International Finance Corporation;

(2) Foreign sovereign debt Securities provided that at least one nationally recognized statistical rating organization has rated in one of its two highest categories either the issue, the issuer or guarantor;

(3) The British pound, the Canadian dollar, the Swiss franc, the Japanese yen or the Euro;

(4) Irrevocable letters of credit issued by a Foreign Bank, other than the borrower or an affiliate thereof, which has a counterparty rating of investment grade or better as determined by a nationally recognized statistical rating organization; or

(5) Any type of collateral described in Rule 15c3–3 of the 1934 Act as amended from time to time provided that the lending fiduciary is a U.S. Bank or U.S. Broker-Dealer and such fiduciary indemnifies the plan with respect to the difference, if any, between the replacement cost of the borrowed Securities and the market value of the collateral on the date of a borrower default plus interest and any transaction costs which a plan may incur or suffer directly arising out of a borrower default. Notwithstanding the foregoing, collateral described in any of the categories enumerated in section V(e) of Prohibited Transaction Exemption 2006–16 will be considered U.S. Collateral for purposes of the exemption.

RR. ''Foreign Exchange Transaction'' means the exchange of the currency of one nation for the currency of another nation, or a contract for such an exchange. The term Foreign Exchange Transaction includes option contracts on foreign exchange transactions. Foreign Exchange Transactions may be either ''spot'', ''forward'' or ''split'' depending on the settlement date of the transaction.

SS. ''GNMA'' means the Government National Mortgage Association.

TT. ''Independent Monitor'' or ''IM'' means an individual or entity appointed by BlackRock to carry out certain functions set forth in Sections II, III and V of the exemption and who (or which), given the number of types of Covered Transactions and the number of actual individual Covered Transactions potentially covered by the exemption, must be knowledgeable and experienced with respect to each Covered Transaction and able to demonstrate sophistication in relevant markets, instruments and trading techniques relative thereto, and, in addition, must understand and accept in writing its duties and responsibilities under ERISA and the exemption with respect to the Client Plans. The IM must be independent of and unrelated to BlackRock and any MPS. For purposes of this exemption, such individual or entity will not be deemed to be independent of and unrelated to BlackRock and the MPSs if:

(1) Such individual or entity directly or indirectly controls, is controlled by, or is under common control with BlackRock or an MPS;

(2) Such individual or entity, or any employee thereof performing services in connection with this exemption, or an officer, director, partner, or highly compensated employee (as defined in Code section 4975(e)(2)(H)) thereof, is an officer, director, partner or highly compensated employee (as defined in Code section 4975(e)(2)(H)) of BlackRock or an MPS; or any member of the business segment performing services in connection with this exemption is a relative of an officer, director, partner or highly compensated employee (as defined in Code section 4975(e)(2)(H)) of BlackRock or an MPS.

However, if an individual is a director of the IM and an officer, director, partner or highly compensated employee (as defined in Code section 4975(e)(2)(H)) of BlackRock or an MPS, and if he or she abstains from participation in any of the services performed by the IM under this exemption, then this Section VI.OO.(2) shall not apply.

For purposes of this Subsection, the term officer means a president, any senior vice president in charge of a principal business unit, division or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for the IM, BlackRock, or an MPS.

(3) The IM directly or indirectly receives any compensation or other consideration for the IM's personal account in connection with any Covered Transaction, except that the IM may receive compensation from BlackRock for acting as IM as contemplated herein if the amount or payment of such compensation is reasonable and not contingent upon or in any way affected by any decision made by the IM while acting as IM; or

(4) The annual gross revenue received by the IM, during any year of its engagement, from the MPSs and BlackRock Entities for all services exceeds the greater of (a) five percent (5%) of the IM's annual gross revenue from all sources for its prior tax year, or, (b) one percent (1%) of the annual gross revenue of the IM and its majority shareholder from all sources for their prior tax year.

UU. ''Index'' means an equity or debt Securities or commodities index that represents the investment performance of a specific segment of the market for equity or debt Securities or commodities in the United States and/or an individual foreign country or any collection of foreign countries, but only if—

(1) The organization creating and maintaining the index is:

(a) Engaged in the business of providing financial information, evaluation, advice or Securities brokerage services to institutional clients,

(b) A publisher of financial news or information, or

(c) A public Securities exchange or association of Securities dealers; and

(2) The index is created and maintained by an organization independent of all BlackRock Entities. For purposes of this definition of ''Index,'' every BlackRock Entity is deemed to be independent of every MPS.

(3) The index is a generally accepted standardized index of Securities or commodities which is not specifically tailored for the use of a BlackRock Manager(s).

(4) If the organization creating, providing or maintaining the Index is an MPS:

(a) Such Index must be widely-used in the market by independent institutional investors other than pursuant to an investment management or advisory relationship with a BlackRock Manager, and must be prepared or applied by such MPS in the same manner as for customers other than a BlackRock Manager(s);

(b) BlackRock must certify to the ECO whether, in its reasonable judgment, such Index is widely-used in the market. In making this determination, BlackRock shall take into consideration factors such as (i) publication of summary Index information by the MPS providing the Index, Bloomberg, Reuters, or a similar institution involved in the dissemination of financial information, and (ii) delivery of Index information including but not limited to Index component information by such MPS to clients or other subscribers including by electronic means including via the Internet;

(c) BlackRock must notify the ECO if it becomes aware that: (i) Such Index is operated other than in accordance with objective rules, in the ordinary course of business, (ii) manipulation of any such Index has occurred for the purpose of benefiting BlackRock, or (iii) in the event that any rule change occurred in connection with the rules underlying such Index, such rule change was made by the MPS for the purpose of benefiting BlackRock; provided, however, this Subsection (c)(iii) expressly excludes instances where the rule changes were made in response to requests from clients/prospective clients of BlackRock even if BlackRock is ultimately hired to manage such a portfolio (e.g., if plan sponsor X requests a ''Global ex-Sudan Fixed Income Index'', an MPS decides to sponsor such index and plan sponsor X approaches BlackRock or otherwise issues a ''Request for Proposal'' for investment managers who could manage an index portfolio benchmarked to the Global ex-Sudan Fixed Income Index).

(d) BlackRock must certify to the ECO annually that it is not aware of the occurrence of any of the events described in Section VI.PP.(4)(c), and if BlackRock cannot so certify, or if BlackRock provides the ECO with the notice described Section VI.PP.(4)(c), the ECO shall notify the IM, and the IM must take appropriate remedial action which may include, but need not be limited to, instructions for relevant BlackRock Managers to cease using such Index.

VV. ''Index Account or Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by a BlackRock Manager or a BlackRock Entity, in which one or more Client Plans invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an Index by either (i) replicating the same combination of Securities or commodities which compose such Index or (ii) sampling the Securities or commodities which compose such Index based on objective criteria and data;

(2) For which the BlackRock Manager does not use its discretion, or data within its control, to affect the identity or amount of Securities or commodities to be purchased or sold;

(3) That contains ''plan assets'' subject to either ERISA section 406, Code section 4975 or FERSA section 8477(c); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Index Account or Fund which is intended to benefit a BlackRock Entity or an MPS, or any party in which a BlackRock Entity or an MPS may have an interest.

For purposes of this definition of ''Index Account or Fund'', every BlackRock Entity is deemed to be independent of each MPS.

WW. ''In-House Plan'' means an employee benefit plan that is subject to ERISA section 406 and/or Code section 4975, and that is sponsored by a BlackRock Entity for its employees.

XX. ''Interbank Rate'' means the interbank bid and asked rate for foreign exchange transactions of comparable size and maturity at the time of the transaction as quoted on a nationally recognized service for facilitating foreign currency trades between large commercial banks and Securities dealers.

YY. ''Know'' means to have actual knowledge. BlackRock Managers will be deemed to have actual knowledge of information set forth in a written agreement or offering document as of the date the BlackRock Manager receives such agreement or document.

ZZ. ''Lead Arranger'' means, with respect to any Loan Offering involving more than one Arranger, the Arranger designated as such by all of such Arrangers.

AAA. ''Loan'' means, solely for purposes of Section III.W. of this exemption, a delivery by a lender and receipt by a commercial borrower of a sum of money to fund current and ongoing operations or a specific transaction upon agreement that such borrower is to repay it upon agreed terms. For the avoidance of doubt, this term does not include any Fixed Income Obligations which are covered separately under Section IV.A. of this exemption.

BBB. ''Loan Offering'' means, with respect to the aggregate principal amount of any Loan extended to a commercial borrower in any single transaction, the process of structuring, marketing and offering to banks, insurance companies, investment funds and other institutional investors the opportunity to purchase interests in such Loan.

CCC. ''Model'' means a computer model that is based on prescribed objective criteria using independent data not within the control of a BlackRock Entity to transform an Index.

DDD. ''Model-Driven Account or Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by a BlackRock Manager or a BlackRock Entity in which one or more Client Plans invest, and—

(1) Which is composed of Securities or commodities the identity of which and the amount of which are selected by a Model;

(2) That contains ''plan assets'' subject to either ERISA section 406, Code section 4975 or FERSA section 8477(c); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Model-Driven Account or Fund or the utilization of any specific objective criteria which is intended to benefit a BlackRock Entity or an MPS, or any party in which a BlackRock Entity or an MPS may have an interest.

For purposes of this definition of ''Model-Driven Account or Fund,'' every BlackRock Entity is deemed to be independent of each MPS.

EEE. ''MPS'' or ''Minority Passive Shareholder'' means any of (1) Barclays PLC, (2) The PNC Financial Services Group, Inc., or (3) each entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with one or more of Barclays PLC (Barclays MPSs) or The PNC Financial Services Group, Inc., (PNC MPSs) (each of the PNC MPSs and the Barclays MPSs, an MPS Group) but excluding any and all BlackRock Entities.

FFF. ''MPS Group'' shall have the meaning set forth in the definition of MPS.

GGG. ''MPS Plans'' means an employee benefit plan(s) that is subject to ERISA section 406 and/or Code section 4975, and that is sponsored by an MPS for its employees.

HHH. ''Other Account or Fund'' means any investment fund, account or portfolio sponsored, maintained,

trusteed, or managed by a BlackRock Manager or a BlackRock Entity in which one or more Client Plans invest, and—

(1) Which is not an Index Account or Fund or a Model-Driven Account or Fund; and

(2) That contains ''plan assets'' subject to either ERISA section 406, Code section 4975 or FERSA section 8477(c).

III. ''Pooled Fund'' means a common or collective trust fund or other pooled investment fund:

(1) In which Client Plan(s) invest;

(2) For which a BlackRock Manager exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s); and

(3) That contains ''plan assets'' subject to either ERISA section 406, Code section 4975 or FERSA section 8477(c).

Solely for purposes of Section IV of this exemption, ''Pooled Fund(s)'' shall only include funds or trusts which otherwise meet this definition but which also are either (i) maintained by a BlackRock Entity or (ii) maintained by a person which is not a BlackRock Entity but is sub-advised by a BlackRock Manager, provided that with respect to a Pooled Fund described in (ii), (A) the fund or trust is either a bank-maintained common or collective trust fund or an insurance company pooled separate account that holds assets of at least $250 million, (B) the bank or insurance company sponsoring the Pooled Fund has total client assets under its management or control in excess of $5 billion as of the last day of its most recent fiscal year, and shareholders' or partners' equity in excess of $1 million, and (C) the decision to invest the Client Plan into the bank-maintained common or collective trust or insurance company pooled separate account and to maintain such investment is made by a Client Plan fiduciary which is not a BlackRock Entity. Such sub-advised Pooled Funds are sometimes referred to herein as ''Sub-Advised Pooled Funds''.

JJJ. ''Qualified Institutional Buyer'' or ''QIB'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

KKK. ''QPAM Exemption'' or ''PTE 84–14'' means Prohibited Transaction Exemption 84–14, as amended.

LLL. ''Qualified Professional Asset Manager'' or ''QPAM'' shall have the meaning set forth in Section VI(a) of the QPAM Exemption.

MMM. ''Rating Organizations'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings Inc., DBRS Limited, DBRS, Inc., or any similar agency subsequently recognized by the Department as a Rating Organization or any successors thereto.

NNN. ''Recognized Securities Exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under section 6 of the 1934 Act, or a designated offshore securities market, as defined in Regulation S of the SEC (17 CFR part 230.902(b)), as such definition may be amended from time to time, which performs with respect to Securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable Securities laws (e.g., 17 CFR part 240.3b–16).

OOO. ''Registered Investment Advisor'' means an investment advisor registered under the Investment Advisors Act of 1940, as amended, that has total client assets under its management or control in excess of $5 billion as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million, as shown in the most recent balance sheet prepared within the two years immediately preceding a Covered Transaction, in accordance with generally accepted accounting principles.

PPP. ''SEC'' means the United States Securities and Exchange Commission.

QQQ. ''Securities'' shall have the same meaning as defined in section 2(a)(36) of the 1940 Act. For purposes of Section IV of this exemption, except as where specifically identified, Asset-Backed Securities are treated as debt Securities.

RRR. ''Three Quote Process'' means three bids or offers (either of which being sometimes referred to as quotes) are received by a trader for a BlackRock Manager each of which such quotes such trader reasonably believes is an indication that the dealer presenting the bid or offer is willing to transact the trade at the stipulated volume under discussion, and all material terms (including volume) under discussion are materially similar with respect to each other such quote. In selecting the best of three such quotes, a BlackRock Manager shall maintain books and records for the three firm bids/offers in a convention that it reasonably believes is customary for the specific asset class (such as ''price'' quotes, ''yield'' quotes or ''spread'' quotes). For example, corporate bonds are often quoted on a spread basis and dealers customarily quote the spread above a certain benchmark bond's yield (e.g., for a given size and direction such as a BlackRock trader may ask for quotes to sell $1 million of a particular bond, dealer 1 may quote 50 bps above the yield of the 10 year treasury bond, dealer 2 might quote 52 bps above the yield of the 10 year treasury bond and dealer 3 might quote 53 bps above the yield of the 10 year treasury bond). If only two firm bids/offers can be obtained, the trade requires prior approval by the ECO and the ECO must inquire as to why three firm bids/offers could not be obtained. If in the case of a sale or purchase a trader for a BlackRock Manager reasonably believes it would be injurious to the Client Plan to specify the size of the intended trade to certain bidders, a bid on a portion of the intended trade may be treated as a firm bid if the trader documents (i) why the bid price is a realistic indication of the economic terms for the actual amount being traded despite the difference in the size of the actual trade and (ii) why it would be harmful to the Client Plan to solicit multiple bids on the actual amount of the trade. If a trader for a BlackRock Manager solicits bids from three or more dealers on a sale or purchase of a certain volume of Securities, and receives back three or more bids, but at least one bid is not for the full amount of the intended sale, if the price offered by the partial bidder(s) is less than the price offered by the full bidder(s), the trader may assume a full bid by the partial bidder(s) would not be the best bid, and the trader can consummate the trade, in the case of at least two full bids, with the dealer making the better of the full bids, or in the case of only one full bid, with the dealer making that full bid.

SSS. ''Underwriter Exemption(s)'' means a group of individual exemptions granted by the Department to provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by plans of Asset-Backed Securities representing undivided interests in those trusts. Such group of individual exemptions was collectively amended by Prohibited Transaction Exemption 2009–31, 74 FR 59001 (Nov. 16, 2009).

TTT. ''U.S. Bank'' means a bank as defined in section 202(a)(2) of the Investment Advisers Act, as amended.

UUU. ''U.S. Broker-Dealer'' means a broker-dealer registered under the 1934 Act or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted government Securities (as defined in section 3(a)(12) of the 1934 Act).

VVV. ''U.S. Collateral'' means:

(1) U.S. currency;

(2) ''Government securities'' as defined in section 3(a)(42)(A) and (B) of the 1934 Act;

(3) ''Government securities'' as defined in section 3(a)(42)(C) of the 1934 Act issued or guaranteed as to principal or interest by the following corporations: The Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association and the Financing Corporation;

(4) Mortgage-backed Securities meeting the definition of a ''mortgage related security'' set forth in section 3(a)(41) of the 1934 Act;

(5) Negotiable certificates of deposit and bankers acceptances issued by a ''bank'' as that term is defined in section 3(a)(6) of the 1934 Act, and which are payable in the United States and deemed to have a ''ready market'' as that term is defined in 17 CFR 240.15c3–1; or

(6) Irrevocable letters of credit issued by a U.S. Bank other than the borrower or an affiliate thereof, or any combination, thereof.

WWW. ''Violation'' means a Covered Transaction which is a prohibited transaction under ERISA sections 406 or 407, Code section 4975, or FERSA section 8477(c) and which is not exempt by reason of a failure to comply with this exemption or another administrative or statutory exemption. To the extent that the non-exempt prohibited transaction relates to an act or omission that is separate and distinct from a prior otherwise exempt transaction that may relate to the same asset (e.g., a conversion of a debt instrument into an equity instrument or a creditor's committee for a debt instrument), the Violation occurs only at the current point in time and no Violation shall be deemed to occur for the earlier transaction relating to the same asset (e.g., the initial purchase of the asset) that was otherwise in compliance with ERISA, the Code or FERSA.

Dated: Signed at Washington, DC, this 27th day of March, 2012.

Lyssa Hall,

Acting Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2012–7704 Filed 3–30–12; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Parts 721, 795, and 799

Certain Polybrominated Diphenylethers; Significant New Use Rule and Test Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 721, 795, and 799

[EPA–HQ–OPPT–2010–1039; FRL–8889–3]

RIN 2070–AJ08

Certain Polybrominated Diphenylethers; Significant New Use Rule and Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Agency is proposing to amend the Toxic Substances Control Act (TSCA) section 5(a) Significant New Use Rule (SNUR), for certain polybrominated diphenylethers (PBDEs) by: Designating processing of six PBDEs, or any combination of these chemical substances resulting from a chemical reaction, as a significant new use; designating manufacturing, importing, and processing of a seventh PBDE, decabromodiphenyl ether (decaBDE) for any use which is not ongoing after December 31, 2013, as a significant new use; and making inapplicable the article exemption for SNURs for this action. A person who intends to import or process any of the seven PBDEs included in the proposed SNUR, as part of an article for a significant new use would be required to notify EPA at least 90 days in advance to ensure that the Agency has an opportunity to review and, if necessary, restrict or prohibit a new use before it begins. EPA is also proposing a test rule under TSCA that would require any person who manufactures or processes commercial pentabromodiphenyl ether (c-pentaBDE), commercial octabromodiphenyl ether (c-octaBDE), or commercial decaBDE (c-decaBDE), including in articles, for any use after December 31, 2013, to conduct testing on their effects on health and the environment. EPA is proposing to designate all discontinued uses of PBDEs as significant new uses. The test rule would be promulgated if EPA determines that there are persons who intend to manufacture, import, or process c-pentaBDE, c-octaBDE, or c-decaBDE, for any use, including in articles, after December 31, 2013.

DATES: Comments must be received on or before June 1, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–1039, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online 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. Attention: Docket ID Number EPA–HQ–OPPT–2010–1039. 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: Direct your comments to docket ID number EPA–HQ–OPPT–2010–1039. EPA's policy is that all comments received will be included in the 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 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 on the SNUR, contact:* John Bowser, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8082; email addresses: *bowser.john@epa.gov*.

For technical information on the test rule, contact: Catherine Roman, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8708; email addresses: *roman.catherine@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?

You may be affected by this action if you manufacture or process tetrabromodiphenyl ether (tetraBDE), pentabromodiphenyl ether (pentaBDE), hexabromodiphenyl ether (hexaBDE), heptabromodiphenyl ether (heptaBDE), octabromodiphenyl ether (octaBDE), nonabromodiphenyl ether (nonaBDE), or decaBDE, or intend to, including as part of a mixture or article. TSCA defines manufacture to include import. Unless otherwise noted in this preamble, use of the term ''manufacture'' includes import. Manufacturers and processors in certain industries to whom this action may apply include, but are not limited to:

- Manufacturers and processors of subject chemical substances and

mixtures (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

- Textile manufacturers and processors (NAICS codes 313, 314, and 315).
- Furniture manufacturers (NAICS code 337).
- Manufacturers and processors of polyurethane foam (NAICS code 326150).
- Manufacturers of high impact polystyrene (HIPS) and acrylonitrile-butadiene-styrene (ABS) plastics (NAICS codes 325, 326140, and 3261).
- Manufacturers of electronics equipment (NAICS codes 334 and 335).

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

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. See Units VII. and VIII. for a discussion of how this action may affect import certification and export notification requirements.

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.

C. Can I request an opportunity to present oral comments to the Agency?

You may submit a request for an opportunity to present oral comments on this proposed test rule. This request must be made in writing. If such a request is received on or before July 2, 2012, EPA will hold a public meeting on this proposed test rule in Washington, DC. This written request must be submitted to the mailing or hand delivery addresses provided under **ADDRESSES**. If such a request is received, EPA will announce the scheduling of the public meeting in a subsequent document in the **Federal Register**. If a public meeting is announced, and if you are interested in attending or presenting oral and/or written comments at the public meeting, you should follow the instructions provided in the subsequent **Federal Register** document announcing the public meeting.

II. Background

A. What action is the Agency taking?

The Agency is proposing to amend the SNUR at 40 CFR 721.10000 (Ref. 1) that requires any person who intends to manufacture or import tetrabromodiphenyl ether (tetraBDE), pentabromodiphenyl ether (pentaBDE), hexabromodiphenyl ether (hexaBDE), heptabromodiphenyl ether (heptaBDE), octabromodiphenyl ether (octaBDE), or nonabromodiphenyl ether (nonaBDE), or any combination of these chemical substances that results from a chemical reaction, for any use on or after January 1, 2005, to notify EPA at least 90 days in advance. EPA is proposing to amend the SNUR by:

1. Designating processing of any of the six PBDEs after December 31, 2013, for any use which is not ongoing as a significant new use.

2. Designating manufacturing, importing, and processing of a seventh PBDE, decabromodiphenyl ether (decaBDE) (Chemical Abstracts Service Registry Number (CASRN) 1163–19–5) for any use which is not ongoing after December 31, 2013, as a significant new use.

3. Making inapplicable for this SNUR, the article exemption for SNURs at 40 CFR 721.45(f).

A person that imports or processes any of the chemical substances identified in the proposed SNUR for a significant new use as part of an article would be subject to the significant new use notification requirements. No person would be able to begin manufacturing, importing, or processing, including as contained in an article, any of the chemical substances identified in the proposed SNUR for a significant new use without first submitting a significant new use notification (SNUN) to EPA. Ongoing uses would be excluded from the SNUR.

EPA will not designate ongoing uses as significant new uses. Persons who manufacture, import, or process any of the chemicals included in the proposed SNUR, including as contained in an article, for an ongoing use, would be free to continue without submitting a SNUN. Note, however, that uses not already ongoing as of April 2, 2012 would not be considered ongoing uses if they later arise, even if they are in existence upon the issuance of a final rule. Furthermore, uses that are ongoing as of April 2, 2012 would not be considered ongoing uses if they have ceased by the date of issuance of a final rule. (See Unit V.C. for further discussion of what constitutes an ongoing use.)

Persons who intend to begin (or resume) commercial manufacture or processing of the chemical substance(s), including in articles, for a significant new use, would have to comply with all applicable SNUN requirements. Under TSCA section 5(b)(1)(A), any person who is required to submit a SNUN for a chemical substance and who is also required to submit test data under a final test rule, must submit the test data at the time that the SNUN is submitted.

In this document, EPA is also proposing to issue a test rule under TSCA section 4(a)(1)(A) that would require any person who manufactures, imports, or processes c-pentaBDE, c-octaBDE, or c-decaBDE including in articles for any use after December 31, 2013 to conduct testing of such

commercial PBDE mixtures to obtain data on health effects, environmental effects, and chemical fate in accordance with the test rule. The effective date of the test rule will be after December 31, 2013; see 40 CFR 799.5350(k) of this proposed rule. The proposed test rule specifies that testing of c-pentaBDE, c-octaBDE, and c-decaBDE be conducted on representative forms of the relevant commercial mixtures. The commercial mixture, c-pentaBDE, typically contains tetraBDE, pentaBDE, and hexaBDE as the predominant components; the commercial mixture, c-octaBDE, typically contains hexaBDE, heptaBDE, octaBDE, and nonaBDE as the predominant components; and the commercial mixture, c-decaBDE, typically contains decaBDE in the highest percent composition.

If EPA finds that manufacture, import, or processing of c-pentaBDE, c-octaBDE, or c-decaBDE for any purpose, including as contained in an article other than as an impurity, will occur after December 31, 2013, EPA will promulgate a final test rule to require persons who manufacture or process those mixtures to conduct testing to obtain data on health effects, environmental effects, and chemical fate of those mixtures. The test rule would apply to all uses, new or ongoing. The existence or absence of a SNUR does not affect a person's obligations under a test rule. The required testing would provide EPA with data necessary to determine the effects on health and the environment if the manufacture and processing of those mixtures and their associated use, distribution in commerce and disposal are not discontinued.

EPA is seeking public comment on both the proposed SNUR and test rule. Comments may address any aspect of the action being proposed. Unit XI. contains a list of specific issues for which the Agency is seeking comment. The actions EPA is proposing are generally described in the ''Polybrominated Diphenyl Ethers (PBDEs) Action Plan Summary'' (PBDE Action Plan) (Ref. 2).

B. Why is the Agency taking this action?

EPA is concerned about the effects PBDEs may have on human health and the environment. As discussed in Unit III. and the PBDE Action Plan (Ref. 2), there is evidence that PBDEs may be toxic to both humans and wildlife. PBDEs have been found in human tissue, wildlife and the environment (Refs. 3–6). However, a panel of experts in the Voluntary Children's Chemical Evaluation Program (VCCEP) reported to EPA that there were insufficient data to fully evaluate the significance of exposure to pentaBDE, octaBDE, and decaBDE (Refs. 7 and 8).

EPA is also concerned that the PBDEs included in these proposed actions are highly persistent in the environment. Some lower brominated PBDEs are both toxic and highly bioaccumulative. Other, more highly brominated forms such as decaBDE may debrominate to the more toxic and bioaccumulative lower brominated forms. However, the overall impact of debromination of decaBDE as a source of the lower brominated PBDE congeners in the environment has not been fully characterized. DecaBDE has been found at high levels in predators such as peregrine falcons. The environmental significance of such accumulations of decaBDE has not been fully characterized. The exact mechanisms or pathways by which the PBDEs, including those contained in articles, move into and through the environment and allow humans and wildlife to become exposed are not fully understood. The data produced by some of the tests included in the proposed test rule would be necessary to determine the effects on the environment if manufacturing and processing of c-pentaBDE, c-octaBDE, and c-decaBDE and their associated use, distribution in commerce, and disposal are not discontinued.

In December 2009, EPA received voluntary commitments from the principal manufacturers and importer of c-decaBDE to phase out manufacture and import for all uses by December 31, 2013 (Refs. 9–11). The phase out of c-decaBDE will be accomplished in two steps. No later than December 31, 2012, the manufacturers and the importer of c-decaBDE would cease manufacture and import for all uses, including in articles, with the exception of military and transportation uses. No later than December 31, 2013, they would cease manufacture and import for all uses including military and transportation uses, including in articles. The principal manufacturers and importer of c-decaBDE stated that the additional time required for phasing out military and transportation uses was due to the stringent engineering requirements and risks associated with these applications as well as the multiple levels of testing and certification required for such product changes. EPA believes manufacture and processing for most uses of decaBDE will have ceased by December 31, 2013, and is proposing to use its authority under TSCA section 5 to designate discontinued uses as significant new uses. Once an activity has been determined, by a rule published in the **Federal Register**, to be a significant new use, persons may not manufacture or process the chemical substance for that activity without first submitting a SNUN to EPA. The Agency would then have an opportunity to review and, if necessary, take action to restrict or prohibit the new use.

C. How would the proposed SNUR and test rule affect PBDEs contained in articles?

The proposed SNUR includes a proposal to eliminate the article exemption for SNURs at 40 CFR 721.45(f), for the covered PBDEs. See 40 CFR 721.10000(c)(1) of this proposed rule. In general, persons who import or process chemical substances contained in articles are exempt from significant new use notification requirements. However, as discussed in Unit III. and the PBDE Action Plan (Ref. 2), there is growing evidence that people and the environment are exposed to PBDEs contained in articles, and that those PBDEs may have adverse effects on human health and the environment. The Agency is concerned that commencement of new uses of PBDEs or resumption of discontinued uses, including in articles, may lead to increased exposure of humans and the environment to these chemicals. Making the article exemption for SNURs inapplicable for this proposed SNUR would ensure that the Agency has an opportunity to review and, if necessary, take action to restrict or prohibit significant new uses of PBDEs in articles before they resume. Thus, anyone who intends to manufacture or process a PBDE for a significant new use, including persons who intend to import or process articles containing a PBDE for a significant new use, would have to submit a SNUN at least 90 days before commencing such activity. Any ongoing uses identified at the point of finalization, including import or processing of articles containing PBDEs, would not be designated as significant new uses. These activities would be allowed to continue without the submission of a SNUN. Eliminating article importers' and article processors' exemption from the requirement to submit a SNUN, as described in this proposed rule, would have no effect on article importers' general exemption from import certification requirements, or on the articles exemption described at 40 CFR 707.60(b), respecting export notifications.

The proposed test rule applies to certain commercial PBDE mixtures, including those contained in articles. See 40 CFR 799.5350(b)(1) of this proposed rule. Importers of articles containing c-pentaBDE, c-octaBDE, or c-

decaBDE are considered manufacturers of these mixtures and would be subject to the proposed test rule, along with persons who domestically manufacture these chemicals in bulk or as part of a mixture. Persons who process c-pentaBDE, c-octaBDE, or c-decaBDE, including persons who process articles containing these mixtures, would also be subject to the proposed test rule. (These testing requirements apply even in circumstances where the manufacture [including import] or processing is for purposes of export from the United States.) Persons who do not know or cannot reasonably ascertain that they manufacture or process a listed test rule mixture (based on all information in their possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), would not be subject to this proposed test rule for the listed mixtures. The proposed test rule would not require testing of articles themselves. The testing would be required of a representative commercial form of the c-PBDE contained in the article. See 40 CFR 799.5350(a)(1) of this proposed rule. Eliminating article importers' and article processors' exemption from the requirement to conduct testing of c-PBDEs, as described in this proposed rule, would have no effect on article importers' general exemption from import certification requirements, or on the articles exemption described at 40 CFR 707.60(b), respecting export notifications.

This proposed rule would not affect the article exemption at 40 CFR 707.60(b) for notices of export under TSCA section 12(b). Thus, persons who export PBDEs contained in articles would remain exempt from the requirement to submit a notice of export respecting such PBDEs. See Unit VII.

Furthermore, this proposed rule would not alter the application of the import certification regulations at 19 CFR 12.118 through 12.127. PBDEs contained in articles would therefore continue to be exempt from import certification requirements under TSCA section 13(b). PBDEs imported in bulk or as part of a mixture would continue to be subject to import certification requirements under TSCA section 13(b), consistent with 19 CFR 12.120(b). See Unit VIII.

D. Why is EPA proposing both a SNUR and a test rule?

EPA has found no evidence of manufacture or processing of c-pentaBDE or c-octaBDE except as impurities. The principal manufacturers and importer of c-decaBDE have informed the Agency that they intend to phase out manufacture and import of the chemical no later than December 31, 2013 (Refs. 9–11). EPA believes that other manufacturers and importers of decaBDE will also cease their activities by that date. EPA is proposing to amend the SNUR to ensure that after these activities have been discontinued, no one resumes them without notifying EPA in advance, thereby providing EPA with an opportunity to review the new uses before they commence. Before promulgating the amended SNUR, EPA will verify through comments on this action, or by other means, that the proposed significant new uses have ceased. EPA seeks comment on whether anyone intends to manufacture, import or process any of the PBDEs included in the proposed SNUR, including in articles, for any of the proposed significant new uses.

EPA is proposing a test rule to obtain information needed to assess the effects on humans and the environment of manufacture, import, or processing of c-pentaBDE, c-octaBDE, or c-decaBDE in the event these activities do not cease by December 31, 2013.

E. Why does the proposed test rule include three commercial PBDE mixtures while the SNUR includes seven PBDE congeners?

The test rule is designed to provide the Agency with data relevant to commercial PBDE products actually in use or intended for use. There are three commercial PBDE products: c-PentaBDE, c-octaBDE, and c-decaBDE. The test rule proposes that testing be conducted on a representative form of each commercial mixture to better understand their potential effects on health and the environment. Some of the data obtained by the test rule would address unmet data needs identified by EPA through the VCCEP. All three of the commercial PBDE products are mixtures, but have different predominant components. Other PBDE congeners may be present in the mixtures in lesser amounts.

The SNUR is designed to provide the Agency with advance notice of manufacture or processing of any one or any combination of the seven PBDEs for a significant new use. Since the composition of any future commercial PBDE products may vary in terms of congener composition, the Agency determined that it would be more effective to include all seven of the individual PBDE congeners in the SNUR. Thus, all congeners in any future commercial PBDE product would be subject to the SNUR reporting requirements.

F. Will EPA promulgate both the test rule and the SNUR?

EPA could promulgate both the test rule and the SNUR. EPA's focus in this proposed rule is on the phase-out of the manufacture and import of PDBEs for all uses, including in articles. EPA's final action would depend on whether the manufacture or processing of c-pentaBDE, c-octaBDE, or c-decaBDE will continue after December 31, 2013, as explained in Units II.F.1. and II.F.2. The existence or absence of a SNUR does not affect a person's obligations under a test rule.

1. *Reporting obligations if continuing existing uses of PBDEs.* If EPA were to learn through comments on this proposed action, or through other means, that a person intended to manufacture or process c-pentaBDE, c-octaBDE, or c-decaBDE after December 31, 2013, EPA would promulgate the test rule. If a person indicated his intention to continue to engage in an activity proposed as a significant new use for any of these c-PBDEs, EPA would promulgate the proposed amendments to the SNUR designating all other uses of that PBDE as significant new uses. EPA would exclude the ongoing uses from the final SNUR. Therefore, a person who is manufacturing, importing or processing the c-PBDEs for an ongoing use after the effective date of the test rule would not need to submit a SNUN for that use and would be allowed to continue those activities while complying with the test rule. (See Unit V.C. for further discussion of what constitutes an ongoing use.) However, if EPA were to learn that the only persons that would be subject to the test rule would be persons that process (rather than manufacture) c-pentaBDE, c-octaBDE, or c-decaBDE as impurities contained in articles, EPA would not require testing because EPA has not determined whether this activity alone may present an unreasonable risk of injury to health or the environment. For example, persons who grind old plastic pallets containing decaBDE for the purpose of reusing the ground material in the fabrication of ''new'' plastic pallets would be considered processors of decaBDE as an impurity, if the decaBDE is unintentionally present in the recycled product (see Unit II.C.). If decaBDE is still being used as a flame retardant in a recycled product, it would have been considered to be processed.

2. *Reporting obligations if initiating new uses of PBDEs, including resumption of discontinued uses.* Uses

not ongoing at the time of the proposal would be designated significant new uses in the final SNUR. Uses ongoing at the time of this proposed rule, but discontinued at the time the SNUR is finalized, would also be designated significant new uses. As required under TSCA section 5(b)(1)(A), if EPA has promulgated a final test rule for a chemical substance, any person who is required to submit a SNUN before beginning the manufacture or processing of that chemical substance is also required to submit test data under the final test rule for that chemical substance at the time that the SNUN is submitted. Persons who intend to begin (or resume) commercial manufacture, import, or processing of the chemical substance(s), including in articles, for such uses would have to comply with all applicable SNUN requirements, including submission of data if a test rule is in effect, and wait until EPA's statutorily-defined time period for its review of the SNUN expires before commencing those activities.

EPA expects that the manufacture and processing of the PBDEs identified in this proposed rule, except as impurities, including these PBDEs when contained in articles, will have been discontinued for most uses by the date indicated in the proposed amendments to the SNUR. EPA intends to promulgate amendments to the SNUR designating manufacturing and processing for any use which is not ongoing (including uses first arising after April 2, 2012 and uses discontinued since April 2, 2012) as a significant new use. The proposed SNUR would not apply to any ongoing uses identified at the point of finalization (i.e., uses arising before April 2, 2012 and which have not been discontinued as of the date of finalization). All other uses, including discontinued uses, would be designated as significant new uses. EPA recognizes that certain portions of the proposed significant new use may be still ongoing as of April 2, 2012, and will verify whether they have been discontinued (i.e., whether they are indeed ongoing) before issuing a final SNUR that incorporates them.

G. What is the Agency's authority for taking this action?

1. *SNURs.* Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a SNUN to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). For purposes of TSCA section 5, the terms ''manufacture'' and ''process'' mean manufacturing or processing for commercial purposes.

2. *Test rule.* Section 2(b)(1) of TSCA (15 U.S.C. 2601(b)(1)) states that it is the policy of the United States that ''adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture [which is defined by statute to include import] and those who process such chemical substances and mixtures[.]'' To implement this policy, TSCA section 4(a)(1)(A) (15 U.S.C. 2603(a)(1)(A)) provides that EPA shall require by a rule published in the **Federal Register** manufacturers or processors or both of chemical substances and mixtures conduct testing, if the EPA Administrator makes the findings under either or both TSCA section 4(a)(1)(A) (an ''A'' finding) and/or TSCA section 4(a)(1)(B) (a ''B'' finding) in a final rule. Under TSCA section 4(a)(1)(A), the EPA Administrator must find that:

> (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,
>
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data[.]

Under TSCA section 4(a)(1)(B), the EPA Administrator must find that:

> (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture, (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

Under TSCA section 4(a)(2), if the EPA Administrator finds that, in the case of a mixture, the effects which the mixture's manufacture, distribution in commerce, processing, use, or disposal or any combination of such activities may have on health or the environment may not be reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture; the EPA Administrator shall by rule require that testing be conducted on such mixture.

The purpose of the testing would be to develop data with respect to the health and environmental effects for which there is an insufficiency of data and experience, and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of the chemical substance or mixture, or that any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

The extent to which such activities may affect health or the environment is dependent in part upon the human and environmental exposures to the chemical substance or mixture occasioned by those activities. As an example, TSCA section 4(b)(2)(A) specifically addresses testing for persistence of a substance. Testing to identify where and in what concentrations a chemical substance or mixture may become present in the environment contributes to an understanding of human and environmental exposures resulting from those activities.

Once the EPA Administrator has made the relevant findings under TSCA section 4(a), EPA may require any health or environmental effects testing for which data are insufficient and which are necessary to develop the data. EPA need not limit the scope of testing required to the factual basis for the TSCA section 4(a)(1)(A)(i) or 4(a)(1)(B)(i) finding as long as EPA also finds that there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and that testing is necessary to develop such data. This approach is explained in more detail in EPA's TSCA section 4(a)(1)(B) Final Statement of Policy (B Policy) published in the **Federal Register** issue of May 14, 1993 (Ref. 12).

In this proposed test rule, based on a preliminary ''A'' finding, EPA would use its authority under TSCA section 4(a) to require the development of data ''which are relevant to a determination that the manufacture, processing,

distribution in commerce, use, or disposal * * * or any combination of such activities'' of any or all of the three c-PBDE mixtures, i.e., c-pentaBDE, c-octaBDE, and c-decaBDE, does or does not present an unreasonable risk of injury to health or the environment.

Pursuant to TSCA section 12(a)(2), EPA is also proposing to use its authority under TSCA section 4(a) to require testing of mixtures named in this proposed test rule which would otherwise be exempted from TSCA under section 12(a)(1). Section 12(a)(1) of TSCA exempts from TSCA the manufacture, processing, or distribution in commerce of a mixture for export from the United States in certain situations. Such testing would be for the purpose of determining whether or not the mixture presents an unreasonable risk of injury to health within the United States or to the environment of the United States.

H. How are the general provisions applicable?

1. *SNUR.* General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, and exemptions to reporting requirements.

However, the article exemption for SNURs at 40 CFR 721.45(f) would not apply to this proposed SNUR. A person who imports or processes a chemical substance that would be covered by this action as part of an article would be subject to SNUN reporting requirements. A person who manufactures or processes a PBDE only as an impurity would be exempt from the SNUR under 40 CFR 721.45(d).

Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submissions requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

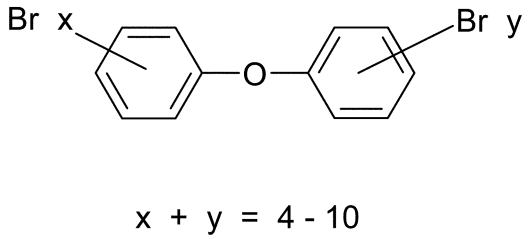
2. *Test rule.* General provisions for test rules appear under 40 CFR part 790 (subparts A, B, C, and E), part 791, part 792, and part 799 (subpart A). These provisions describe persons subject to the rule, procedures for developing test rules, implementation, enforcement, and modification of test rules, exemption from testing, data reimbursement, and good laboratory practice standards. 40 CFR 791.48(b) would not apply to this proposed test rule for the purpose of defining production volume to determine fair reimbursement shares. Production volume would be defined as including amounts of the test chemical substance imported in bulk form, in mixtures, in articles, and the total domestic production of the chemical substance including that produced as a byproduct or as an impurity. See 40 CFR 799.5350(f) of this proposed rule. Also, persons described in 40 CFR 790.2 as subject to a test rule include, among others, importers and processors of a chemical substance or mixture as part of an article. Submission of a SNUN would not affect a person's obligations under a test rule.

III. Overview of PBDEs

A. Chemistry of PBDEs

The PBDEs are a family of chemical substances with a common structure of a brominated diphenyl ether molecule which may have anywhere from 4 to 10 bromine atoms attached (Figure 1).

Figure 1.--Brominated Diphenyl Molecule



Each individual PBDE variant, distinguished from others by both the number of bromine atoms and the placement of those atoms, is referred to as a congener. For example, there are 42 tetrabromodiphenyl ether congeners, each with 4 bromine atoms in different configurations. Specific congeners, also known as isomers, in which both the number and location of bromine atoms is specified are given numbers, e.g., BDE–47. In theory, there could be as many as 209 PBDE congeners, but a much smaller number of congeners are commonly found in the commercial PBDE products and in measurements of PBDEs in humans and the environment (Table 1 of this unit). Scientific studies, particularly those measuring presence of PBDEs in tissues and the environment, often report their findings by BDE number.

PBDE congeners can be grouped as homologs, i.e., according to the number of bromine atoms present in the molecule. The TSCA Chemical Substances Inventory (TSCA Inventory) listings and regulations for PBDEs are based on these homolog groups. (Table 1 of this unit). The PBDE homologs used in flame retardants have between 4 and 10 bromine atoms. EPA regulations of PBDEs generally apply to congeners grouped according to homolog groups rather than specific congener/isomers designated by BDE number.

There are three types of commercial PBDE (c-PBDE) products, c-pentaBDE, c-octaBDE, and c-decaBDE; each commercial product is a mixture of PBDE congeners (see Table 2 of this unit).

TABLE 1—PBDE HOMOLOG GROUPS

Common name	Chemical abstracts (CA) index name	Chemical abstracts service registry number (CASRN)	Number of bromine (Br) atoms
TetraBDE	Benzene, 1,1′-oxybis-, tetrabromo deriv.	40088–47–9	4
PentaBDE	Benzene, 1,1′-oxybis-, pentabromo deriv	32534–81–9	5
HexaBDE	Benzene, 1,1′-oxybis-, hexabromo deriv	36483–60–0	6
HeptaBDE	Benzene, 1,1′-oxybis-, heptabromo deriv	68928–80–3	7
OctaBDE	Benzene, 1,1′-oxybis-, octabromo deriv	32536–52–0	8
NonaBDE	Benzene, 1,1′-oxybis-, 1,2,3,4,5- pentabromo-6- (tetrabromophenoxy)-	63936–56–1	9
DecaBDE	Benzene, 1,1′-oxybis [2,3,4,5,6- pentabromo-	1163–19–5	10

TABLE 2—CONGENERS IN COMMERCIAL PBDE MIXTURES

Commercial mixture	Major components	Minor components
c-PentaBDE	TetraBDE PentaBDE.	HexaBDE.
c-OctaBDE	HeptaBDE OctaBDE	HexaBDE. NonaBDE. DecaBDE.
c-DecaBDE	DecaBDE	NonaBDE.

B. Actions Taken to Understand and Limit Risk from Use of PBDEs

EPA has been concerned about the reported health and environmental effects of PBDEs and potential exposure to PBDEs for some time, and has taken several actions to fully understand their effects and to reduce exposure to them. Of particular note are the VCCEP, which was announced in 2000 (Ref. 13), and the 2006 PBDE SNUR (Ref. 1). More recently, EPA articulated its concerns regarding these effects in the PBDE Action Plan (Ref. 2).

c-PentaBDE, c-octaBDE, and c-decaBDE were among the chemical substances evaluated in VCCEP. VCCEP was designed to collect health effects information on chemicals to which children had a high likelihood of being exposed and to characterize the risk to children from that exposure. Sponsors in VCCEP provided health effects and exposure information on a voluntary basis. Through VCCEP the Agency identified data needs for all three c-PBDEs that were beyond what was provided by the sponsors in the initial chemical assessments. The sponsors of c-pentaBDE and c-octaBDE, however, declined to conduct testing to address the identified data needs because of plans to discontinue manufacture of these chemicals in 2004. Later the sponsors of c-decaBDE also declined to conduct testing to provide the data needs identified through VCCEP and subsequently decided to phase out their activities with c-decaBDE. As a result, the sponsoring companies did not meet the additional data needs identified through VCCEP for any of the three c-PBDEs. Tests addressing those data needs are among the tests proposed for c-pentaBDE, c-octaBDE, and c-decaBDE in this proposed rule. c-PentaBDE and c-octaBDE had been widely used as additive flame retardants in a number of applications until their sole U.S. manufacturer, the Great Lakes Chemical Corporation (now Chemtura Corporation) voluntary phased out their production in 2004. c-PentaBDE was used primarily in flexible polyurethane foams. c-OctaBDE was used in acrylonitrile-butadiene-styrene (ABS) plastic which was used in applications such as casing for certain electric and electronic devices used in both offices and homes. When manufacture of c-pentaBDE and c-octaBDE was discontinued, EPA promulgated a SNUR (Ref. 1) which requires that any person who intends to manufacture or import a chemical substance containing any of the congeners present in c-pentaBDE or c-octaBDE (namely tetraBDE, pentaBDE, hexaBDE, heptaBDE, octaBDE, and nonaBDE), or any combination of these chemical substances resulting from a chemical reaction, to notify EPA at least 90 days in advance of manufacture or import for any use on or after January 1, 2005. The SNUR does not address processing of PBDEs, nor does it apply to import of articles which contain any of the congeners present in c-pentaBDE or c-octaBDE.

c-DecaBDE is still manufactured and widely used in the United States as an additive flame retardant. The three major product categories in which c-decaBDE is used are: Textiles, electronic equipment, and building and construction materials. Its primary use is in high impact polystyrene (HIPS) based products. However as a result of the voluntary phase-out announced on December 17, 2009 (Refs. 9–11), EPA expects manufacture and processing for most uses of c-decaBDE to be discontinued by the end of 2013.

Other actions EPA has taken with PBDEs include:

1. Supporting the inclusion in voluntary consensus standards of criteria restricting PBDE use as a product component (e.g., in carpets, electronics, and furniture) or use in manufacturing processes.

2. Working with and through programs (i.e., Furniture Flame Retardancy Partnership and the Green Suppliers Network) to identify environmentally safer approaches to meeting fire standards and to improve awareness of concerns related to PBDEs.

C. Human Health Effects

In 2008, EPA published peer-reviewed toxicological reviews of tetraBDE (BDE–47), pentaBDE (BDE–99), hexaBDE (BDE–153), and decaBDE (BDE–209) (Refs. 14–17), to support summary information on EPA's Integrated Risk Information System (IRIS) database (*http://www.epa.gov/iris*). Developmental neurotoxicity was identified as the critical effect for each of the four chemicals. EPA also concluded that the database for decaBDE (BDE–209) provides ''suggestive evidence of carcinogenic potential'' (Ref. 17).

Through EPA's VCCEP, industry-sponsored screening level risk assessments for c-pentaBDE, c-octaBDE, and c-decaBDE were developed to

evaluate the potential risks to children and prospective parents from PBDE exposures (Ref. 13). EPA's evaluation of these assessments considered adverse neurobehavioral effects to be the most sensitive health endpoint following postnatal exposure to PBDEs (Refs. 7 and 8). Effects on spontaneous motor behavior (locomotion, rearing, and total activity) were observed in adult rats after postnatal exposure. Additional effects due to higher exposures to c-pentaBDE were observed in the following studies:

- Repeated-dose toxicity studies for c-pentaBDE showed changes in liver enzyme activity, increased liver weight, and histologic changes in the liver.
- Changes in thyroid hormone T_4 levels and thyroid hyperplasia were noted in oral adult rat studies.
- In limited prenatal developmental studies, decreases in T_4 levels were reported for dams and offspring (Ref. 7).

Additional effects due to higher exposures to c-octaBDE were observed in the following studies:

- Repeated-dose toxicity studies showed changes in liver enzyme activity and increased liver weights.
- In prenatal developmental studies, decreased maternal and pup bodyweight and decreases in thyroid hormone T_4 levels were reported for rat dams and their offspring (Ref. 7).

EPA concluded there was evidence of developmental and reproductive effects from exposure to c-pentaBDE and c-octaBDE, but that additional studies are needed to better characterize potential risks to children (Ref. 7). Through VCCEP, EPA identified 2-generation reproductive toxicity studies with a satellite group for body burden determinations as a data need for both c-pentaBDE and c-octaBDE (Ref. 7). Also through VCCEP, EPA identified anaerobic debromination in aquatic sediments, anaerobic debromination in sludge digesters, and photolysis in the indoor environment as data needs for c-decaBDE to better understand the chemical fate and thereby the potential exposure to decaBDE and lower brominated congeners (Ref. 8).

D. Environmental Hazard

Laboratory studies have shown that c-pentaBDE is capable of producing adverse effects in a variety of organisms including birds, mammals, fish, and invertebrates (Refs. 3 and 18–28). In some cases, these effects were observed at exposure levels similar to levels found in the environment.

E. Environmental Releases and Fate

The exact mechanisms or pathways by which the PBDEs move into and through the environment and allow humans to become exposed are not fully understood, but are likely to include releases from manufacturing of the chemicals, processing c-PBDEs into products like plastics or textiles, aging and wear of products like sofas and electronics, and releases at the end of product life (disposal or recycling). In general, levels of PBDE congeners in humans and the environment are higher in North America than in other regions of the world, which may be attributed to the greater use of c-PBDEs in North America (Refs. 29 and 30). The concentration and distribution of congeners detected in the environment appear to depend on the proximity to a source of the congener and the media tested (Ref. 31).

PBDE congeners with four to ten bromine atoms are highly persistent, based on a large body of environmental monitoring data in both the United States and abroad (Refs. 4, 32, and 33). Available data also indicate that the tetra-, penta-, hexa- and heptaBDE congeners are highly bioaccumulative (Ref. 34). After reviewing the available information, EPA has concluded that decaBDE is a likely contributor to the formation of bioaccumulative and/or potentially bioaccumulative transformation products, such as lower brominated PBDEs, in organisms and in the environment see, e.g., (Refs. 35–38), but the overall impact of this process as a source of the more toxic, lower brominated PBDE congeners has not been fully characterized. DecaBDE undergoes photolytic and possibly microbial debromination under certain conditions (Refs. 33 and 38). Photolysis is expected to be a significant transformation process for decaBDE whenever the substance is significantly exposed to light. For example, it has been found that decaBDE undergoes photolytic debromination in house dust (Ref. 39). DecaBDE would also be exposed to light when waste sludge containing PBDEs is used as a soil amendment, albeit only on the soil surface (Ref. 40). Studies have shown that photodegradation of decaBDE may result in PBDEs from tri- to nona-, although most photolysis studies were done under conditions that do not allow direct extrapolation to environmental conditions. Metabolism of decaBDE in organisms results predominantly in nona-, octa- and heptaBDE formation (as reviewed in Ref. 33). Stapleton (Ref. 38) summarized the effects of decaBDE debromination, noting that the formation potential for the pentaBDE and lower congeners was low, but that the formation of the hepta, octa and nonaBDE congeners was environmentally relevant.

The atmosphere and marine currents can transport PBDEs over relatively long distances (> 1,000 kilometer (km)). Evidence for this comes from the presence of PBDEs in the tissues of deep ocean-dwelling whales and other marine mammals far from anthropogenic sources (Ref. 4), as well as from modeling (Ref. 40). The body burdens of PBDE congeners in a wide variety of biota, indigenous to geographical areas ranging from the equator to the poles also substantiate the PBDE propensity for long-range transport (LRT), and constitute evidence of environmental persistence (Ref. 34).

F. Human Exposure

The use of c-PBDEs as flame retardants in consumer products is believed to be a source of exposure. Dermal exposure may occur through direct contact with c-PBDE-containing products such as computer housings and textiles (Ref. 5). The lower brominated tetra- and penta-congeners have also been detected in the vapor phase of air samples while the higher brominated congeners are found in associated particulate matter, including house dust (Refs. 41 and 42). Lorber (Ref. 42) and EPA (Ref. 5) reported that a significant source of human exposures to PBDEs appears to be their use in commercial products that are part of the indoor environment (computer circuitry, foam cushions, fabrics in curtains, etc). They found that food/water ingestion and inhalation explained less than 20% of the body burden, based upon the estimate of total exposure derived using a pharmacokinetic model. They stated that the remainder of the estimated exposure likely came from house dust through the pathways of ingestion and dermal contact, or some other, unknown source. Other literature indicates that inhalation may be a significant potential route of exposure for the general population (Ref. 5). In addition, PBDE exposure can occur by ingestion of foods that are contaminated (Ref. 43). PBDEs have been detected in human tissue, blood (usually serum), and breast milk (Ref. 44). Exposure to PBDEs in some occupational settings, such as in computer recycling, can be higher than those of the general population (Ref. 45). PBDE use as flame retardants in many household products, and subsequent exposure to indoor house dust containing PBDEs, coupled with the elevated ingestion potential due to increased intakes of food, water, and air per pound of body weight, as well as childhood-specific exposure pathways

such as breast milk consumption and increased contact with the floor, make children especially vulnerable.

Recent human biomonitoring data on PBDEs are available in the Centers for Disease Control and Prevention's (CDC) ''Fourth National Report on Human Exposure to Environmental Chemicals'' (Ref. 46). The PBDE data have also been published in the peer-reviewed literature (Ref. 45). The data were obtained from samples from participants in the 2003–2004 National Health and Nutrition Examination Survey (Ref. 46). Ten PBDE congeners (containing from three to seven bromines) were included in the analysis: BDE–17, BDE–28, BDE–47, BDE–66, BDE–85, BDE–99, BDE–100, BDE–153, BDE–154, and BDE–183; decaBDE was not included.

Participants were aged 12 years and older. BDE–47 was detected in serum from almost all of the participants and it was highest in 12–19 years old, and those over 59 years old.

Furthermore, serum levels were highest in 12–19 year olds for other lower-brominated congeners. In addition, these congeners were significantly correlated with each other—concentration of individual congeners and total PBDE content in blood serum steadily increased annually over a 5-year period, suggesting a similar pathway of exposure via diet, or via direct inhalation or dermal contact.

G. Environmental Exposure

The food chain is likely a large contributor to environmental exposures. In general, PBDE concentrations are highest in sediment samples collected downstream from industrial/urban areas, outfalls from sewage treatment plants, and urban locations without heavy industries. The lowest PBDE concentrations are generally found in sediments collected in remote and agricultural areas. DecaBDE (BDE–209) appears to dominate congener profiles of aquatic sediments. Researchers have determined concentrations of PBDEs in waterways, sediments, and biota from various locations such as the Great Lakes, the San Francisco Bay, and near an unnamed polyurethane foam manufacturing facility for which PBDE contamination was known or suspected (Ref. 5).

Some studies show evidence that concentrations of PBDEs in biota have doubled every 3 to 6 years, the doubling time depending on species, life stage, and location. PBDE levels in trout from the Great Lakes rose from non-detectable in 1975, to approximately 50 nanograms/gram (ng/g) in 1990, and to approximately 200 ng/gm in 2000 (Ref. 47). PBDE concentrations in marine biota in North America are the highest in the world, and are increasing (Ref. 4). After reviewing the available information, EPA has concluded that the extent of accumulation of congeners in biota is directly related to dietary levels of PBDEs. Observed differences in PBDE congener profiles in marine mammals from California, Alaska, and the Gulf of Mexico indicate that diet is a significant source of PBDE exposure in marine wildlife (Ref. 4).

DecaBDE has been found at high levels in predators such as peregrine falcons (Ref. 6). Biomonitoring studies of wild mink from the Great Lakes region revealed that margins of safety for mink are small, and that PBDE concentrations in mink from Hamilton Harbor exceeded the no-observed-adverse-effect concentrations (Ref. 3).

Biomagnification is the process in which the concentration of a chemical in an organism achieves a level that exceeds that in the organism's diet, due to dietary absorption (Ref. 48). Biomagnification occurs as predators up the food chain ingest the accumulated PBDEs in the bodies of their prey (Refs. 4 and 49–51). Environment Canada concluded that the greatest potential risks from PBDEs in the Canadian environment are the secondary poisoning of wildlife from the consumption of prey containing elevated concentrations of PBDEs, and effects on benthic organisms that may result from elevated concentrations of certain PBDEs in sediments (Ref. 32). Biomagnification of PBDEs has been observed in fish; PBDE levels in sediment were directly related to increases and decreases in the PBDE levels measured in fish (Ref. 52). Environment Canada concluded that decaBDE is available for uptake in organisms, and may accumulate to high and potentially problematic levels in certain species such as birds of prey or mammalian predators (Ref. 33).

Although not conclusive, some data suggests that PBDEs may debrominate in the bodies of wild birds. Park, *et al.,* (Ref. 47) found that younger peregrine falcons had higher levels of BDE–209 and other highly brominated congeners, whereas older birds had higher levels of the less brominated (hexa) BDE–153, which could not be explained by the BDE–153 levels in diet. Further, in eggs that were collected yearly from the same bird, PBDE congener concentrations changed yearly, with levels of BDE–209 decreasing, and levels of BDE 153 increasing in the last 2 years relative to the former 4 years (but no such obvious changes in polychlorinated biphenyl (PCB) levels). The chemical measurements and comparison in this study are valuable because a similar laboratory study would take many years in similar long-lived avian species (peregrines live 7–15 years or longer), and environmental variables that affect PBDE uptake and biomagnifications, including exposure to other chemicals, might be difficult to simulate. Similar evidence of debromination of decaBDE has been observed in carp (Refs. 38 and 53) and British starlings (Ref. 53).

IV. Proposed Findings

A. SNUR

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution, in commerce, and disposal of a chemical substance.

To determine what would constitute a significant new use of PBDEs, EPA also considered other relevant factors including information about the toxicity of PBDEs as well as exposures and environmental presence resulting from past use.

As discussed in Unit III., there is evidence that PBDEs may be toxic to humans and wildlife. However, there is insufficient data to fully evaluate the significance of observed exposures. EPA is also concerned that the PBDEs included in these proposed amendments to the SNUR are highly persistent in the environment. Some lower brominated PBDEs are highly bioaccumulative, and others may debrominate to the lower brominated forms. In general, levels of PBDEs in humans and the environment are higher in North America than in other regions of the world, which may be attributed to the greater use of PBDEs in North America. Some monitoring data show a steady increase from non-detectable levels when PBDEs first came into use to current levels. The exact mechanisms or pathways by which the PBDEs move into and through the environment and allow humans and wildlife to become exposed are not fully understood, but are likely to include releases from manufacturing of the chemicals,

processing PBDEs into products like plastics or textiles, aging and wear of products like sofas and electronics, and releases at the end of product life (disposal or recycling).

Once the manufacture and processing of PBDEs have been discontinued, EPA expects their presence in humans and the environment to decline over time as has been observed in the past when production and use of other persistent chemicals has ceased.

EPA is concerned that if manufacture and processing of PBDEs were to resume, the anticipated decline in levels in humans and the environment will be disrupted as PBDEs are introduced into the environment at levels greater than would otherwise occur. The result would be that the magnitude and duration of exposure of humans and the environment in the future would likely increase.

B. Test Rule

Based on the data cited in Units III.C. through III.G., EPA has made the following preliminary determinations. First, c-pentaBDE, c-octaBDE, and c-decaBDE may present a hazard to human health. c-PentaBDE, c-octaBDE, and c-decaBDE were all reviewed under EPA's VCCEP. Members of the peer consultation panel for c-pentaBDE and c-octaBDE noted that there are indications of thyroid toxicity in some rodent studies, and thyroid toxicity can have adverse effects on reproductive success and fetal development (Ref. 7). For c-decaBDE, VCCEP identified anaerobic debromination in aquatic sediments, anaerobic debromination in sludge digesters, and photolysis in the indoor environment as a potential source of human and environmental exposure to lower brominated congeners (Ref. 8). Debromination of decaBDE to form lower brominated, more toxic congeners is potentially relevant to effects on both human health and the environment. EPA's IRIS database indicates that neurobehavioral effects are critical endpoints of concern for components of c-pentaBDE and c-decaBDE. EPA has also concluded that there is suggestive evidence of carcinogenic potential for decaBDE (BDE–209), which is the main component of c-decaBDE.

Second, c-pentaBDE and c-decaBDE may present a hazard to the environment. Laboratory studies have shown that c-pentaBDE is capable of producing adverse effects in a variety of organisms including birds, mammals, fish, and invertebrates. In some cases these effects were observed at exposure levels similar to levels found in the environment. c-DecaBDE may contribute to these levels by debrominating to lower, more toxic brominated congeners in the environment.

Third, pentaBDE, octaBDE, and decaBDE congeners, which are among the predominant components of c-pentaBDE, c-octaBDE, and c-decaBDE respectively, are ubiquitous in soil, sediments and living organisms (Ref. 54). PentaBDE, octaBDE, and decaBDE congeners have been found in human tissue, blood and breast milk (Ref. 55). These chemicals persist in the environment and accumulate in organisms that ingest or inhale them. For example, high levels of decaBDE have been found in high trophic level animals, e.g., predatory animals such as the peregrine falcon. However, the predominant congeners present in living organisms tend to be the lower brominated, more toxic forms, which include pentaBDE (Refs. 56 and 57). Infants and children, as well as people who are occupationally exposed, may be exposed at higher levels than the general public.

Based on the evidence of human and environmental exposure to pentaBDE, octaBDE, and decaBDE congeners, which derive from c-pentaBDE, c-octaBDE, and c-decaBDE, coupled with the evidence of human and/or environmental hazard of c-pentaBDE, c-octaBDE, and c-decaBDE, EPA preliminarily finds under TSCA section 4(a)(1)(A)(i) that the manufacture, processing, distribution in commerce, use, and disposal of c-pentaBDE, c-octaBDE, and c-decaBDE, or any combination of such activities, may present an unreasonable risk of injury to human health and the environment.

Through the testing of c-pentaBDE and c-octaBDE in VCCEP, EPA identified 2-generation reproductive toxicity studies with a satellite group for body burden determinations as a data need for c-pentaBDE and c-octaBDE (Ref. 7). For c-decaBDE, VCCEP identified anaerobic debromination in aquatic sediments, anaerobic debromination in sludge digesters, and photolysis in the indoor environment as data needs (Ref. 8). Therefore, EPA also preliminarily finds under TSCA section 4(a)(1)(A)(ii) that there are insufficient data upon which the effects of such manufacture, processing, distribution in commerce, use, and disposal of c-pentaBDE, c-octaBDE, and c-decaBDE, or any combination of such activities, on health or the environment can reasonably be determined or predicted. Under TSCA section 4(a)(1)(A)(iii), EPA preliminarily finds that testing of c-pentaBDE, c-octaBDE, and c-decaBDE with respect to these and other toxic effects is necessary to develop such data.

EPA has determined in accordance with TSCA section 4(a)(2) that the effects of the mixtures, c-pentaBDE, c-octaBDE, and c-decaBDE, may be reasonably and more efficiently determined by testing the commercial products themselves rather than the individual chemical substances which comprise these mixtures. EPA believes that testing of the individual chemical substances that are present in the commercial mixtures at different percentages would be less efficient and less predictive of the effects of the commercial mixtures than testing of representative forms of commercial products as they are manufactured. EPA believes that testing the mixture will best reflect the effects of exposure due to the possible additive, synergistic, and/or antagonistic effects resulting from the possible interaction of congeners in a mixture. EPA believes that testing the commercial products will be more efficient than testing the individual components because fewer tests would be needed to address the Agency's concerns. Nonetheless, EPA is still requesting comment in Units XI.B.4. through XI.B.7. on what the test substance should be and how it should be defined.

V. Proposed Amendments to the SNUR

A. Summary of Proposed Amendments to the SNUR

This proposed rule would amend the SNUR at 40 CFR 721.10000. Under the existing SNUR, any person who intends to manufacture certain PBDEs must notify EPA at least 90 days before commencing the manufacture of any one or more of those chemical substances after January 1, 2005, for any use. The following chemicals substances are subject to reporting under the existing SNUR: TetraBDE, pentaBDE, hexaBDE, heptaBDE, octaBDE, and nonaBDE, or any combination of these chemical substances resulting from a chemical reaction.

Among other activities, the use of a PBDE in the manufacture of an article is considered processing of the PBDE. In the existing SNUR, the Agency did not designate processing of the subject PBDEs as a significant new use because it believed that such activities were ongoing. The Agency now believes that processing of tetraBDE, pentaBDE, hexaBDE, heptaBDE, octaBDE, and nonaBDE has been discontinued and therefore is proposing to amend the SNUR to include processing as a significant new use. EPA believes that resumption of the practice of processing

PBDEs would increase exposure to PBDEs and releases of PBDEs to the environment. However, as explained in Unit II.F., if a person indicated that he is engaged in an activity proposed as a significant new use for these PBDEs, EPA would promulgate the proposed amendments to the SNUR designating all other uses of that PBDE as significant new uses. EPA would exclude the ongoing use(s) from the final SNUR. The Agency requests comments on whether there is existing, ongoing processing of these chemical substances.

On December 19, 2009, the principal U.S. manufacturers and importer of decaBDE committed to end production, and importation of decaBDE in the United States for all uses except military uses and transportation uses by December 31, 2012, and for all uses including military and transportation uses by the end of 2013 (Refs. 9–11). The Agency also expects other manufacturers to discontinue manufacture of decaBDE by the end of 2013. Therefore, the Agency is proposing to amend the SNUR by adding, after December 31, 2013, decaBDE to the list of chemical substances subject to reporting and by designating (again, after December 31, 2013) manufacture and processing of decaBDE for any discontinued use as a significant new use. The Agency understands that some downstream users of decaBDE would like the manufacture and processing of decaBDE for some uses to continue after December 31, 2013. The Agency understands that these downstream users believe that there will continue to be critical military and aeronautical uses of decaBDE (some examples are use in insulation, ducting, electronic components) after December 31, 2013. The Agency seeks comments on the extent to which these uses will continue despite the phase-out in the manufacture and import of decaBDE and whether there are any other uses which will not be discontinued by December 31, 2013. Persons who comment are asked to specify both the functional application of the article containing decaBDE, e.g., ductwork for aircraft, and the material to which the decaBDE is added, e.g., high impact polystyrene. Persons who comment should also include definitions of terms, where appropriate.

EPA's objective in proposing these amendments to the PBDE SNUR is to enable the Agency to review and, if necessary, limit or prohibit resumption of any activities which could result in increasing the amount of PBDEs in commerce in the United States.

Under the general SNUR exemption provisions at 40 CFR 721.45, a person that imports or processes a substance covered by a SNUR identified in subpart E of 40 CFR part 721 is not generally subject to the notification requirements of 40 CFR 721.25 for that chemical substance, if the person imports or processes the chemical substance as part of an article. However, EPA is concerned that if PBDEs contained in articles are exempt, they could be imported without a SNUN and thereby increase the amount of PBDEs in commerce in the United States without a review by EPA. Therefore, the Agency is proposing that the article exemption for SNURs at 40 CFR 721.45(f) not apply to the rule.

B. Alternatives to the SNUR

Before proposing these amendments to the PBDE SNUR, EPA considered the following alternative regulatory actions:

1. *Promulgate a TSCA section 8(a) reporting rule.* Under a TSCA section 8(a) rule, EPA could, among other things, generally require persons to report information to the Agency when they intend to manufacture or process a listed chemical substance for a specific use or any use. However, for PBDEs the use of TSCA section 8(a) rather than SNUR authority would have several limitations. First, if EPA were to require reporting under TSCA section 8(a) instead of TSCA section 5(a), EPA would not have the opportunity to review human and environmental hazards and exposures associated with the proposed significant new uses and, if necessary, take immediate follow-up regulatory action under TSCA section 5(e) or 5(f) to prohibit or limit the activity before it begins. In view of the level of health and environmental concerns about the chemical substances subject to this proposed rule, if they were used for the proposed significant new uses, EPA believes that a TSCA section 8(a) rule for this chemical substance would not meet EPA's regulatory objectives.

2. *Regulate under TSCA section 6.* EPA may regulate under TSCA section 6 if ''the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture [...] presents or will present an unreasonable risk of injury to health or the environment.'' (TSCA section 6(a)). Given that the chemical substances named in this proposed rule are no longer being manufactured or processed for the proposed significant new uses, or the activities are scheduled to be discontinued, EPA concluded that risk management action under TSCA section 6 is not necessary at this time. These proposed amendments to the SNUR would allow the Agency to address the potential risks associated with the proposed significant new use. EPA is proposing to require that persons who manufacture, import, or process c-pentaBDE, c-octaBDE, or c-decaBDE after December 31, 2013, conduct testing in accordance with the proposed test rule which accompanies these proposed amendments to the SNUR. The data obtained through such testing will assist the Agency in determining whether additional regulatory action is appropriate.

C. Applicability of the SNURs to Uses Begun After the Publication of This Proposed Rule and Uses Begun Prior to the Publication of This Proposed Rule

With respect to uses that are not ongoing as of the date of publication of the proposed rule, as discussed in the **Federal Register** of April 24, 1990 (55 FR 17376) (1990 Decision), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR requirements, because a person could defeat the SNUR by initiating the proposed significant new use before the proposed rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who begin commercial manufacture or processing of the chemical substance(s), or articles containing those chemical substances that would be regulated through the proposed rule, if finalized, would have to cease any such activity before the effective date of the final rule if and when finalized, where such manufacture or processing was not ongoing at the time of proposal. This applies to all entities that do not currently engage in these activities; it does not apply to entities that are currently engaged in these activities. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions (40 CFR 721.45(h)) to allow persons to submit a SNUN before the effective date of the SNUR. If a person were to meet the conditions of 40 CFR 721.45(h), that person would be considered to have met the requirements of the final SNUR for

those activities, when that final SNUR became effective.

In this action, EPA proposes to designate as significant new uses certain uses that are ongoing as of the date of publication of the proposed rule, but for which there is a reasonable expectation that the use will be discontinued in the near future. Such uses would not be designated as significant new uses if they remain ongoing at the time the SNUR is finalized. EPA's 1990 Decision regarding uses commenced after proposal and ongoing at the time the SNUR is finalized (i.e., that they may be designated as significant new uses, notwithstanding the fact that they are ongoing at the time of finalization) is inapplicable to uses that are ongoing as of the date of publication of the proposed rule.

D. Test Data and Other Information

EPA recognizes that TSCA section 5 generally does not require the development of any particular test data before submission of a SNUN, however EPA is also proposing a test rule for c-pentaBDE, c-octaBDE, and c-decaBDE under TSCA section 4(a)(1)(A). Under TSCA section 5(b)(1), if a chemical is subject to a test rule, persons submitting a SNUN are required to submit test data in accordance with the test rule at the time the SNUN is submitted. In the absence of a test rule or a TSCA section 5(b)(4) rule (see TSCA section 5(b)(2)) covering the chemical substance, persons are required to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). As a general matter, EPA recommends that SNUN submitters include data that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture, processing, or use. EPA encourages persons to consult with the Agency before submitting a SNUN. As part of this optional pre-notice consultation, EPA would discuss specific data it believes may be useful in evaluating a significant new use. SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) to prohibit or limit activities associated with this chemical.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on:

1. Human exposure and environmental releases that may result from the significant new uses of the chemical substance.
2. Potential benefits of the chemical substance.
3. Information on risks posed by the chemical substances resulting from the significant new use compared to risks posed by potential substitutes.

E. SNUN Submissions

EPA recommends that submitters consult with the Agency prior to submitting a SNUN to discuss what data may be useful in evaluating a significant new use. Discussions with the Agency prior to submission can afford ample time to conduct any tests that might be helpful in evaluating risks posed by the chemical substance. According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50.

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the EPA in accordance with the procedures set forth in 40 CFR 721.25 and 720.40. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

VI. Proposed Test Rule

A. What testing is being proposed?

EPA is proposing specific testing and reporting requirements for c-pentaBDE, c-octaBDE, and c-decaBDE. These requirements are presented in Table 3 of this unit.

TABLE 3—PROPOSED TESTING AND REPORTING REQUIREMENTS FOR C-PENTABDE, C-OCTABDE, AND C-DECABDE

Proposed test	Test guideline	Test proposed for:			Deadline for submitting final report (number of months after the effective date in proposed 40 CFR 799.5350(k))
		c-penta BDE	c-octa BDE	c-deca BDE	
Toxicity to freshwater invertebrates of sediment-associated contaminants.	ASTM International (ASTM) E 1706–05e1 and ASTM E 1391–03 [1].	X	X	X	12
Laboratory soil toxicity and bioaccumulation tests with the lumbricid earthworm *Eisenia fetida* and the enchytraeid potworm *Enchytraeus albidu*.	ASTM E 1676–04 and ASTM E 1391–03 [2].	X	X	X	12
Toxicity to polychaetous annilids of sediment-associated contaminants.	ASTM E 1611–00 and ASTM E 1391–03 [1].	X	X	X	12
Laboratory soil toxicity to nematode *Caenorhabditis elegans*.	ASTM E 2172–01 and ASTM E 1391–03 [2].	X	X	X	12
Toxicity to estuarine and marine invertebrates of sediment-associated contaminants.	ASTM E 1367–03, ASTM E 1676–04 [3] and ASTM E 1391–03 [1].	X	X	X	12
Prenatal developmental toxicity in rabbits.	40 CFR 799.9370	X	X	X	12
2-Generation reproductive toxicity with satellite group for body burden determinations.	40 CFR 799.9380	X	X	X	29
Immunotoxicity	40 CFR 799.9780	X	X	X	12
Neurotoxicity screening battery, acute and subchronic.	40 CFR 799.9620	X	X	X	21

TABLE 3—PROPOSED TESTING AND REPORTING REQUIREMENTS FOR C-PENTABDE, C-OCTABDE, AND C-DECABDE—Continued

Proposed test	Test guideline	Test proposed for:			Deadline for submitting final report (number of months after the effective date in proposed 40 CFR 799.5350(k))
		c-penta BDE	c-octa BDE	c-deca BDE	
Developmental neurotoxicity	40 CFR 799.9630	X	X	[4] X	21
Chronic toxicity/carcinogenicity	40 CFR 799.9430	X	X		60
Anaerobic aquatic metabolism	40 CFR 795.25 (modified OCSPP 835.4400 [5]).			X	60
Biodegradation in Anaerobic Digester Sludge.	40 CFR 795.30 (modified OCSPP 835.3280 [5]).			X	24
Photolytic degradation in the indoor environment.	40 CFR 795.65			X	24

[1] ASTM E 1391–03 provides guidance on the collection, storage, characterization, and manipulation of sediments when toxicity to various organisms of sediment-associated contaminants is tested.
[2] ASTM E 1391–03 provides general guidance.
[3] ASTM E 1676–04 provides guidance for collecting laboratory soil.
[4] A developmental neurotoxicity study of decaBDE (Ref. 58) conducted according to the Organization for Economic Cooperation and Development (OECD) Guideline 426 and sponsored by the Bromine Science and Environmental Forum (BSEF) was submitted to EPA. If EPA considers the study to be adequately conducted and the study requirements of OECD Guideline 426 comparable to the study requirements of 40 CFR 799.9630, EPA will most likely accept the study and not finalize the proposed requirement to conduct developmental neurotoxicity testing of c-decaBDE.
[5] Office of Chemical Safety and Pollution Prevention (OCSPP) test guidelines, formerly Office of Toxic Substances and Pollution Prevention (OPPTS) test guidelines, are available online at *http://www.epa.gov/ocspp/pubs/frs/home/testmeth.htm.*

The proposed testing requirements are listed in 40 CFR 799.5350(h) and (i) of the proposed regulatory text and include the specification of test guidelines covering health effects testing, ecotoxicity testing, and chemical fate testing. EPA's TSCA 799 test guidelines (40 CFR part 799, subpart H) and the Office of Chemical Safety and Pollution Prevention (OCSPP) 835 series test guidelines (on which 40 CFR 795.25 and 40 CFR 795.30 are based) have been harmonized with the OECD test guidelines. However, EPA is specifying that the 40 CFR parts 799 and 795 test guidelines, as well as ASTM International standards, be used rather than OECD test guidelines because the language in 40 CFR parts 799 and 795 test guidelines and the ASTM International standards makes clear which steps are mandatory and which steps are only recommended. Accordingly, in order to comply with the testing required by a final rule, EPA is proposing that testing must be conducted in accordance with the specified 40 CFR parts 799 and 795 test guidelines and ASTM International standards. In addition, EPA is proposing a guideline developed by the Agency, 40 CFR 795.65, to test for photolytic degradation. Most of the proposed testing requirements for a particular endpoint are specified in one test standard. In the case of certain endpoints, however, additional guidance is provided in a second guideline and possibly a third guideline (e.g., ASTM E 1391–03 provides guidance in the collection, storage, characterization, and manipulation of sediments when toxicity to various organisms of sediment-associated contaminants is tested). The following testing endpoints and test standards are proposed to be required for one or more of the test substances in this proposed rule.

1. *Ecotoxicity.* a. Toxicity to freshwater invertebrates of sediment-associated contaminants conducted in accordance with ASTM E 1706–05e1 (Ref. 59) and following the guidance of ASTM E 1391–03 (Ref. 60). EPA proposes this guideline as appropriate to evaluate the toxicity to freshwater invertebrates of the test substance when associated with whole sediments.

b. Laboratory soil toxicity and bioaccumulation tests with the lumbricid earthworm *Eisenia fetida* and the enchytraeid potworm *Enchytraeus albidu* conducted in accordance with ASTM E 1676–04 (Ref. 61) and following the general guidance of ASTM E 1391–03 (Ref. 60). EPA proposes this guideline as appropriate to evaluate the adverse effects and bioaccumulation in earthworms and potworms of the test substance when associated with soils.

c. Toxicity to polychaetous annilids of sediment-associated contaminants conducted in accordance with ASTM E 1611–00 (Ref. 62) and following the guidance of ASTM E 1391–03 (Ref. 60). EPA proposes this guideline as appropriate to evaluate the toxicity to polychaetous annelids of the test substance when associated with sediment.

d. Laboratory soil toxicity to nematode *Caenorhabditis elegans* conducted in accordance with ASTM E 2172–01 (Ref. 63) and following the general guidance of ASTM E 1391–03 (Ref. 60). EPA proposes this guideline as appropriate to evaluate the adverse effects on nematodes of the test substance when associated with soils.

e. Toxicity to estuarine and marine invertebrates of sediment-associated contaminants conducted in accordance with ASTM E 1367–03 (Ref. 64) and following the guidance of ASTM E 1391–03 (Ref. 60). EPA proposes this guideline as appropriate to evaluate the toxicity to estuarine or marine organisms of the test substance when associated with whole sediments.

2. *Mammalian toxicity.* a. Prenatal developmental toxicity in rabbits conducted in accordance with 40 CFR 799.9370. EPA proposes this guideline as appropriate to provide general information concerning the effects of exposure to the test substance on the pregnant test animal and on the developing organism.

b. 2-Generation reproductive toxicity with a satellite group for body burden determinations conducted in accordance with 40 CFR 799.9380. EPA proposes this guideline as appropriate to provide general information concerning the effects of exposure to the

test substance on the integrity and performance of the male and female reproductive systems, and on the growth and development of the offspring.

c. Immunotoxicity conducted in accordance with 40 CFR 799.9780. EPA proposes this guideline as appropriate to provide information on suppression of the immune system which might occur as a result of repeated exposure to a test substance.

d. Neurotoxicity screening battery, acute and subchronic, conducted in accordance with 40 CFR 799.9620. EPA proposes this guideline as appropriate to provide information on gross functional deficits, level of activity, and histopathological changes in the central and peripheral nervous systems of the test animals as a result of acute and subchronic exposure to a test chemical.

e. Developmental neurotoxicity conducted in accordance with 40 CFR 799.9630. EPA proposes this guideline as appropriate to develop data on the potential functional and morphological hazards to the nervous system which may arise in the offspring from exposure of the mother during pregnancy and lactation.

f. Chronic toxicity/carcinogenicity conducted in accordance with 40 CFR 799.9430. EPA proposes this guideline as appropriate to identify the majority of chronic and carcinogenic effects and determine dose-response relationships in a mammalian species following prolonged and repeated exposure to a test substance.

3. *Chemical fate.* a. Anaerobic aquatic metabolism conducted in accordance with OCSPP 835.4400 as modified for c-decaBDE in 40 CFR 795.25. EPA proposes this guideline as appropriate to assess transformation of decaBDE in anaerobic aquatic sediment systems.

b. Biodegradation in anaerobic digester sludge conducted in accordance with OCSPP 835.3280 as modified for c-decaBDE in 40 CFR 795.30. EPA proposes this guideline as appropriate to assess biotransformation in anaerobic digester sludge.

c. Photolytic degradation of c-decaBDE conducted in accordance with an EPA-developed guideline in 40 CFR 795.65. EPA proposes this guideline as appropriate to assess whether PBDEs can migrate out of plastics/fabrics by volatilization; and if photolytic degradation can take place on the surfaces of plastics and fabrics.

B. When would any testing proposed by this rule begin?

The testing requirements contained in this proposed rule are not effective until and unless the Agency issues a final rule. If any manufacturer or processor of c-pentaBDE, c-octaBDE, or c-decaBDE is subject to the test rule after December 31, 2013, the test sponsor may plan the initiation of any required testing as appropriate to submit the required final report by the deadline indicated as the number of months, shown in 40 CFR 799.5350(j) of the proposed regulatory text, after December 31, 2013.

C. How would the studies proposed under this test rule be conducted?

Persons required to comply with the final rule would have to conduct the necessary testing in accordance with the testing and reporting requirements established in the regulatory text of the final rule, with 40 CFR part 790—Procedures Governing Testing Consent Agreements and Test Rules (except for paragraphs (a), (d), (e), and (f) of 40 CFR 790.45; 40 CFR 790.48; paragraph (a)(2) and paragraph (b) of 40 CFR 790.80; paragraph (e)(1) of 40 CFR 790.82; and 40 CFR 790.85), and with 40 CFR Part 792—Good Laboratory Practice Standards.

D. What forms of test mixtures would be tested under this rule?

The test rule proposes that the test mixtures be the representative forms of pentaBDE-containing commercial mixtures, octaBDE-containing commercial mixtures, and decaBDE-containing commercial mixtures. To fully describe the three test mixtures, the percentage of each of the seven congeners present in each of the three test mixtures must be identified by the test sponsor(s).

Each of the three proposed test mixtures is described by its predominant components. c-PentaBDE is a mixture predominantly comprised of pentaBDE, tetraBDE, and hexaBDE. c-OctaBDE is a mixture predominantly comprised of octaBDE, hexaBDE, heptaBDE, and nonaBDE. c-DecaBDE is a mixture with decaBDE being present in the highest percentage. EPA believes that the proposed testing of c-pentaBDE, c-octaBDE, and c-decaBDE will provide EPA with data necessary to determine the effects of commercial PBDE products on human health and the environment. EPA is seeking comment on whether testing of c-pentaBDE, c-octaBDE, and c-decaBDE should be conducted with the pure congener or each congener in each mixture instead of the commercial products. EPA is also seeking comment on whether its descriptions of the commercial mixtures to be tested accurately predict what commercial forms of pentaBDE, octaBDE, and decaBDE might be produced. Finally, EPA solicits comment on whether more than one commercial form each of c-pentaBDE, c-octaBDE, and c-decaBDE should be tested.

E. Would I be required to test under this rule?

Under TSCA section 4(a)(1)(A)(ii), EPA has made preliminary findings that there are insufficient data and experience to reasonably determine or predict health and environmental effects resulting from the manufacture, processing, use, and distribution in commerce of the mixtures listed in this proposed rule. As a result, under TSCA section 4(b)(3)(B), manufacturers and processors of mixtures listed in this proposed rule, and those who intend to manufacture or process them, would be subject to the rule with regard to those listed mixtures which they manufacture or process.

1. *Would I be subject to this rule?* You would be subject to this rule and may be required to test if you manufacture (which is defined by statute to include import) or process, or intend to manufacture or process, one or more mixtures listed in this proposed test rule during the time period discussed in Unit VI.E.2. You would also be subject to this rule if you manufacture or process the subject mixtures for export from the United States. For this rule, importers of articles which include c-pentaBDE, c-octaBDE, or c-decaBDE would be considered manufacturers and subject to this rule. If you do not know or cannot reasonably ascertain that you manufacture or process a listed test rule mixture (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you would not be subject to the rule for that listed mixture.

2. *When would my manufacture or processing (or my intent to do so) cause me to be subject to this rule?* You would be subject to this rule if you manufacture or process, or intend to manufacture or process, a mixture listed in the rule at any time from the effective date in 40 CFR 799.5350(k) of the final test rule to the end of the test data reimbursement period. The term ''reimbursement period'' is defined at 40 CFR 791.3(h) and may vary in length for each mixture to be tested under a final TSCA section 4(a) test rule, depending on what testing is required and when testing is completed. See Unit VI.E.4.

3. *Would I be required to test if I were subject to the rule?* It depends on the nature of your activities. All persons who would be subject to this TSCA

section 4(a) test rule, which, unless otherwise noted in the regulatory text, incorporates EPA's generic procedures applicable to TSCA section 4(a) test rules (contained within 40 CFR part 790), would fall into one of two groups, designated here as Tier 1 and Tier 2. Persons in Tier 1 (those who would have to initially comply with the final rule) would either:

- Submit to EPA letters of intent to conduct testing, conduct this testing, and submit the test data to EPA, or
- Apply to and obtain from EPA exemptions from testing.

Persons in Tier 2 (those who would not have to initially comply with the final rule) would not need to take any action unless they are notified by EPA that they are required to do so (because, for example, no person in Tier 1 had submitted a letter of intent to conduct testing), as described in Unit VI.E.3.d. Note that both persons in Tier 1 who obtain exemptions and persons in Tier 2 would nonetheless be subject to providing reimbursement to persons who actually conduct the testing, as described in Unit VI.E.4.

a. *Who would be in Tier 1 and Tier 2?* All persons who would be subject to the final rule are considered to be in Tier 1 unless they fall within Tier 2. Table 4 of this unit describes who is in Tier 1 and Tier 2.

TABLE 4—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Tier 1 (persons initially required to comply)	Tier 2 (persons not initially required to comply)
Persons who manufacture (as defined at TSCA section 3(7)), or intend to manufacture, a test rule mixture and who are not listed under Tier 2. Importers of articles containing polybrominated diphenyl ethers (PBDEs) are manufacturers.	A. Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a test rule mixture solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring chemical substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kilograms (kg) (1,100 pounds (lb)) annually (as described at 40 CFR 790.42(a)(4)); or —In small quantities solely for research and development (R&D) (as described at 40 CFR 790.42(a)(5)). B. Persons who process (as defined at TSCA section 3(10)) or intend to process a test rule mixture including in articles (see 40 CFR 790.42(a)(2)).

Under 40 CFR 790.2, EPA may establish procedures applying to specific test rules that differ from the generic procedures governing TSCA section 4(a) test rules in 40 CFR part 790. For purposes of this proposed rule, EPA is proposing to establish certain requirements that differ from those under 40 CFR part 790.

In this proposed test rule, EPA has configured the tiers in 40 CFR 790.42 as in certain previous test rules. In addition to processors, manufacturers of less than 500 kilograms (kg) (1,100 pounds (lb)) per year (''small-volume manufacturers''), and manufacturers of small quantities for research and development (''R&D manufacturers''), EPA has added the following persons to Tier 2: Manufacturers of byproducts, manufacturers of impurities, manufacturers of naturally occurring chemical substances, manufacturers of non-isolated intermediates, and manufacturers of components of Class 2 chemical substances. The Agency took administrative burden and complexity into account in determining who was to be in Tier 1 in this proposed rule. EPA believes that those persons in Tier 1 who would conduct testing under this proposed rule, when finalized, would generally be large chemical manufacturers who, in the experience of the Agency, have traditionally conducted testing or participated in testing consortia under previous TSCA section 4(a) test rules.

The Agency also believes that manufacturers of byproducts, impurities, naturally occurring chemical substances, manufacturers of non-isolated intermediates, and manufacturers of components of Class 2 chemical substances historically have not themselves participated in testing or contributed to reimbursement of those persons who have conducted testing. EPA understands that these manufacturers may include persons for whom the marginal transaction costs involved in negotiating and administering testing arrangements are deemed likely to raise the expense and burden of testing to a level that is disproportional to the additional benefits of including these persons in Tier 1. Therefore, EPA is not proposing to burden these persons with Tier 1 requirements (e.g., submitting requests for exemptions). Nevertheless, these persons, along with all other persons in Tier 2, would be subject to reimbursement obligations to persons who actually conduct the testing, as described in Unit VI.E.4.

Section 4(b)(3)(B) of TSCA requires all manufacturers and/or processors of a mixture to test that mixture if EPA has made findings under TSCA sections 4(a)(1)(A)(ii) or 4(a)(1)(B)(ii) for that mixture, and issued a TSCA section 4(a) test rule requiring testing. However, practicality must be a factor in determining who is subject to a particular test rule. Thus, persons who do not know or cannot reasonably ascertain that they are manufacturing or processing a mixture subject to this proposed rule, e.g., manufacturers or processors of a mixture as a trace contaminant who are not aware of or cannot reasonably ascertain these activities would not be subject to the rule. See Unit VI.E.1. and 40 CFR 799.5350(b)(2) of this proposed rule.

EPA believes it is possible that there will be no persons in Tiers 1 and 2A that will be subject to the test rule. If EPA learns that the only persons that would be subject to the rule would be persons that process c-pentaBDE, c-octaBDE, or c-decaBDE as impurities contained in articles, EPA will not require testing because EPA has not determined whether this activity alone may present an unreasonable risk of injury to health or the environment. EPA is seeking comment on whether the Agency should address persons who manufacture or process PBDEs as impurities whether or not they are contained in articles, and whether such persons should be required to conduct testing.

b. *Subdivision of Tier 2 entities.* The Agency is proposing to prioritize which persons in Tier 2 would be required to

perform testing, if needed. Specifically, the Agency is proposing that Tier 2 entities be subdivided into:

i. Tier 2A—manufacturers, i.e., those who manufacture, or intend to manufacture, a test rule chemical substance including in articles solely as one or more of the following: A byproduct, an impurity, a naturally occurring chemical substance, a non-isolated intermediate, a component of a Class 2 chemical substance, in amounts less than 1,100 lb annually, or in small quantities solely for research and development.

ii. Tier 2B–processors, i.e., those who process, or intend to process, a test rule mixture in any form including in articles. The terms ''process'' and ''processor'' are defined by TSCA sections 3(10) and 3(11), respectively.

If the Agency needs testing from persons in Tier 2, EPA would seek testing from persons in Tier 2A before proceeding to Tier 2B. It is appropriate to require manufacturers in Tier 2A to submit letters of intent to test or exemption applications before processors are called upon because the Agency believes that testing costs are traditionally passed along by manufacturers to processors, enabling them to share in the costs of testing (Ref. 65). In addition, ''[t]here are [typically] so many processors [of a given test rule chemical] that it would be difficult to include them all in the technical decisions about the tests and in the financial decisions about how to allocate the costs'' (Ref. 66).

c. *When would it be appropriate for a person who would be required to comply with the rule to apply for an exemption rather than to submit a letter of intent to conduct testing?* You may apply for an exemption if you believe that the required testing will be performed by another person (or a consortium of persons formed under TSCA section 4(b)(3)(A)). You can find procedures relating to exemptions in 40 CFR 790.80 through 790.99, and 799.5350(c)(2), (c)(5), (c)(7), and (c)(11) of this proposed rule. In this proposed rule, EPA would not require the submission of equivalence data (i.e., data demonstrating that your chemical substance or mixture is equivalent to the chemical substance or mixture actually being tested) as a condition for approval of your exemption. Therefore, 40 CFR 790.82(e)(1) and 790.85 would not apply to this proposed rule.

d. *What would happen if I submitted an exemption application?* EPA believes that requiring the collection of duplicative data is unnecessarily burdensome. As a result, if EPA has received a letter of intent to test from another source or has received (or expects to receive) the test data that would be required under this rule, the Agency would conditionally approve your exemption application under 40 CFR 790.87.

The Agency would terminate conditional exemptions if a problem occurs with the initiation, conduct, or completion of the required testing, or with the submission of the required data to EPA. EPA may then require you to submit a notice of intent to test or an exemption application. See 40 CFR 790.93 and 799.5350(c)(8) of the proposed regulatory text. In addition, the Agency would terminate a conditional exemption if no letter of intent to test has been received by persons required to comply with the rule. See, e.g., 40 CFR 799.5350(c)(6) of this proposed rule. Note that the provisions at 40 CFR 790.48(b) have been incorporated into the regulatory text of this proposed rule; thus, persons subject to this rule are not required to comply with 40 CFR 790.48 itself (see 40 CFR 799.5350(c)(4) through (c)(7) and 40 CFR 799.5350(d)(3) of this proposed rule). Persons who obtain exemptions or receive automatic conditional exemptions would nonetheless be subject to providing reimbursement to persons who do actually conduct the testing, as described in Unit VI.E.4.

e. *What would my obligations be if I were in Tier 2?* If you are in Tier 2, you would be subject to the rule and you would be responsible for providing reimbursement to persons in Tier 1, as described in Unit VI.E.4. There is no difference whether you are in Tier 2A or Tier 2B as regards reimbursement. EPA is not aware of any circumstances in which test rule Tier 1 entities have sought reimbursement from Tier 2 entities either through private agreements or by soliciting the involvement of the Agency under the reimbursement regulations at 40 CFR part 791.

Concerning testing, if you are in Tier 2, you are considered to have an automatic conditional exemption. You would not need to submit a letter of intent to test or an exemption application unless you are notified by EPA that you are required to do so. As previously noted, Tier 2A manufacturers would be notified to test before Tier 2B processors (Unit VI.E.3.ii.).

If a problem occurs with the initiation, conduct, or completion of the required testing, or with the submission of the required data to EPA, the Agency may require you to submit a notice of intent to test or submit an exemption application. See 40 CFR 790.93 and 799.5350(c)(10) of the proposed regulatory text.

In addition, you would need to submit a notice of intent to test or an exemption application if:

- No manufacturer in Tier 1 has notified EPA of its intent to conduct testing.
- EPA has published a **Federal Register** document directing persons in Tier 2 to submit to EPA letters of intent to conduct testing or exemption applications.

See 40 CFR 799.5350(c)(4), (c)(5), (c)(6), and (c)(7) of the proposed regulatory text. The Agency would conditionally approve an exemption application under 40 CFR 790.87, if EPA has received a letter of intent to test or has received (or expects to receive) the test data required under this rule.

f. *What would happen if no one submitted a letter of intent to conduct testing?* EPA anticipates that, if there were manufacturers or processors of those chemical substances subject to the final rule, it would receive letters of intent to conduct testing for all of the tests specified for each mixture from one of those persons. However, in the event it does not receive a letter of intent for one or more of the tests required by the final rule for any of the mixtures in the final rule within 30 days after the publication of a **Federal Register** document notifying Tier 2 processors of the obligation to submit a letter of intent to conduct testing or to apply for an exemption from testing, EPA would notify all manufacturers and processors of the mixture of this fact by certified letter or by publishing a **Federal Register** document specifying the test(s) for which no letter of intent has been submitted. This letter or **Federal Register** document would additionally notify all manufacturers and processors that all exemption applications concerning the test(s) have been denied, and would give them an opportunity to take corrective action. If no one has notified EPA of its intent to conduct the required testing of the mixture within 30 days after receipt of the certified letter or publication of the **Federal Register** document, all manufacturers and processors subject to the final rule with respect to that mixture who are not already in violation of the final rule would be in violation of the final rule.

4. *How do the reimbursement procedures work?* In the past, persons subject to test rules have independently worked out among themselves their respective financial contributions to those persons who have actually

conducted the testing. However, if persons are unable to agree privately on reimbursement, they may take advantage of EPA's reimbursement procedures at 40 CFR part 791, promulgated under the authority of TSCA section 4(c). These procedures include: The opportunity for a hearing with the American Arbitration Association; publication by EPA of a document in the **Federal Register** concerning the request for a hearing; and the appointment of a hearing officer to propose an order for fair and equitable reimbursement. The hearing officer may base his or her proposed order on the production volume formula set out at 40 CFR 791.48, but is not obligated to do so. The hearing officer's proposed order may become the Agency's final order, which is reviewable in Federal court (40 CFR 791.60). Under this proposed rule, for the purpose of determining fair reimbursement shares if the hearing officer chooses to use a formula based on production volume, the total production volume will include amounts of a mixture produced as an impurity and amounts imported in articles.

F. What reporting requirements are proposed under this test rule?

If you were required to test, you would be required to submit a final report for a specific test by the deadline indicated in Table 3 in Unit VI.A. as the number of months after the effective date of the final rule; this deadline is also shown in 40 CFR 799.5350(j) of the proposed regulatory text.

EPA is also proposing that a robust summary of the final report for each specific test be required to be submitted electronically in addition to and at the same time as the final report. The term ''robust summary'' is used to describe the technical information necessary to adequately describe an experiment or study and includes the objectives, methods, results, and conclusions of the full study report which can be either an experiment or in some cases an estimation or prediction method. Guidance for the compilation of robust summaries is described in a document entitled ''Draft Guidance on Developing Robust Summaries'' (Ref. 67).

G. What would I need to do if I cannot complete the testing required by the final rule?

A person who submits a letter of intent to test under the final rule and who subsequently anticipates difficulties in completing the testing by the deadline set forth in the final rule may submit a modification request to the Agency, pursuant to 40 CFR 790.55. EPA will determine whether modification of the test schedule is appropriate, and may first seek public comment on the modification.

H. Would there be sufficient test facilities and personnel to undertake the testing proposed under this test rule?

EPA's most recent analysis of laboratory capacity (Ref. 68) indicates that available test facilities and personnel would adequately accommodate the testing proposed in this rule.

I. Might EPA seek further testing of the chemical substances in this proposed test rule?

If EPA determines that it needs additional data regarding any of the chemical substances included in this proposed rule, the Agency would seek further health and/or environmental effects testing for these mixtures. Should the Agency decide to seek such additional testing via a test rule, EPA would initiate a separate action for that purpose.

VII. Export Notification

A. SNUR

Any persons who export or intend to export a chemical substance that is the subject of a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20) and must comply with the export notification requirements in 40 CFR part 707, subpart D. Any person who exports, or intends to export, tetraBDE, pentaBDE, hexaBDE, heptaBDE, octaBDE, and nonaBDE became subject to those requirements with the proposal of the SNUR in 2004 (Ref. 69). This proposed rule would not affect the article exemption at 40 CFR 707.60(b) for notices of export under TSCA section 12(b). Persons who export PBDEs contained in articles would not be required to submit a notice of export respecting such PBDEs.

B. Test Rule

Any person who exports, or intends to export, one of the mixtures contained in this proposed test rule would be subject to the export notification requirements in TSCA section 12(b)(1) (15 U.S.C. 2611(b)) and at 40 CFR part 707, subpart D, but only after the final rule is promulgated and only if the mixture is contained in the final rule. This proposed rulemaking would not affect the article exemption at 40 CFR 707.60(b) for notices of export under TSCA section 12(b). Persons who export PBDE mixtures contained in articles would not be required to submit a notice of export respecting such mixtures.

C. Should articles containing PBDEs be exempt from export notification requirements?

The Agency believes that production and processing of all PBDEs, including in articles, will have ceased in the United States by the end of 2013 but if there are any ongoing uses they would not be subject to a final SNUR. The purpose of the proposed SNUR is to designate new and discontinued uses as significant new uses and to ensure that the Agency has an opportunity to review and, if necessary, take action to restrict or prohibit significant new uses of PBDEs, including in articles, before they resume. The purpose of the proposed test rule is to provide EPA with data necessary to determine the effects on health and the environment if the manufacture and processing of commercial PBDEs and the associated use, distribution in commerce and disposal are not discontinued. The Agency believes that the above objectives will be adequately met with respect to articles by making article exemptions for SNURs and test rules inapplicable for this action. The Agency considered including provisions in the proposed SNUR and test rule requiring that the PBDEs contained in articles be subject to TSCA section 12(b) export notification requirements. However, the Agency does not believe that making exporters of PBDEs contained in articles subject to TSCA section 12(b) export notification requirements would significantly increase the effectiveness of this proposed rule. The Agency is concerned that the potential burdens associated with administration and compliance with export notification requirements for PBDEs contained in articles could be significant. In view of the expected costs the Agency decided that PBDEs contained in articles should continue to be exempt from export notification requirements. The Agency is seeking comment on the need for (and the cost of) making PBDEs contained in articles subject to export notification requirements.

VIII. Import Certification

A. SNUR

Persons who import a chemical substance in bulk or as part of a mixture are subject to the TSCA section 13 (15 U.S.C. 2612) import requirements, codified at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Such persons must certify that the shipment of the chemical substance complies with

all applicable rules and orders under TSCA, including any SNUR requirements. This rule would not affect the exemption from import certification under TSCA section 13(b) for chemicals contained in articles. Persons who import PBDEs contained in articles would not be subject to import certification requirements. PBDEs imported in bulk or as part of a mixture would continue to be subject to import certification requirements under TSCA section 13(b), consistent with 19 CFR 12.120(b). The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. For additional guidance, please refer to EPA's TSCA Import Compliance Checklist at *http://www.epa.gov/oppt/import-export/pubs/checklist.pdf*.

B. Test Rule

Section 13 of TSCA import certification requirements do not pertain to TSCA section 4 test rules. Although importers must satisfy all applicable requirements of TSCA section 4, compliance with those provisions is not related to individual chemical shipments and therefore does not affect import certification.

C. Should articles containing PBDEs be exempt from import certification requirements?

The Agency believes that manufacture, including import, and processing of all PBDEs, including in articles, will have ceased in the United States by the end of 2013. The purpose of the proposed SNUR is to designate new and discontinued uses as significant new uses and to ensure that the Agency has an opportunity to review and, if necessary, take action to restrict or prohibit significant new uses of PBDEs, including in articles, before they resume. The Agency believes that the above objective will be adequately met with respect to articles by making the article exemption for SNURs inapplicable for this action. The Agency does not believe that making importers of PBDEs contained in articles subject to TSCA section 13 import certification requirements would significantly increase the effectiveness of this proposed rule.

The Agency considered including provisions in the proposed SNUR requiring that the PBDEs contained in articles be subject to TSCA section 13 import certification requirements. However, the Agency is concerned that the potential burdens associated with administration and compliance with import certification requirements could be significant. The Agency decided that PBDEs contained in articles should continue to be exempt from import certification requirements. The Agency is seeking comment on the need for (and the cost of) making PBDEs contained in articles subject to import certification requirements.

IX. The Dates That the SNUR, Proposed Amended SNUR, and Proposed Test Rule Requirements Apply to the Seven PBDEs and the Three Commercial Mixtures

The SNUR that became effective on August 14, 2006, requires that persons that intend to manufacture, including import, any of six PBDEs (tetraBDE, pentaBDE, hexaBDE, heptaBDE, octaBDE, and nonaBDE) for any use after January 1, 2005, submit a SNUN to EPA at least 90 days in advance. Processing of the PBDEs was not designated as a significant new use because EPA believed that it was an ongoing activity at the time of proposal. Articles were exempt from that SNUR. EPA now believes that processing of these six PBDEs for any use and import of articles containing them have been discontinued. These proposed amendments to the SNUR would designate processing for any use after December 31, 2013, a significant new use. The proposed amended SNUR would also make inapplicable the article exemption at 40 CFR 721.45(f). Therefore, a person who intends to import or process any of the six PBDEs as part of an article after December 31, 2013, would not be exempt from submitting a SNUN. EPA will promulgate the amended SNUR after it has verified that the proposed significant new uses have been discontinued. For a discussion of applicability of the SNUR to uses begun after the publication of this proposed rule see Unit V.C.

Any person who manufactures or processes or intends to manufacture or process c-pentaBDE, c-octaBDE, or c-decaBDE after December 31, 2013, would be subject to the test rule.

On December 2009, the principal manufacturers and importer of decaBDE announced their intent to phase out their activities with decaBDE and committed to do so by December 31, 2012 for all uses, except military and transportation, and by December 31, 2013, for all uses including military and transportation, with possibly an additional 6 months to sell remaining inventory of decaBDE (Refs. 9–11). The Agency does not believe that manufacturers would need additional time to sell remaining inventory or that processors would require any additional time to use existing stocks, and has not proposed any additional time in this action. EPA is seeking comment on this in Unit XI.A.2.

With this action, EPA is also proposing to amend the 2006 PBDE SNUR at 40 CFR 721.10000 after December 31, 2013, by designating manufacture and processing of decaBDE for any use which is not ongoing, including in articles, as a significant new use. Persons that intend to manufacture or process decaBDE for a significant new use would be required to submit a SNUN to EPA at least 90 days before commencing such activity.

If EPA determined that any person intends to manufacture or process c-pentaBDE c-octa BDE, or c-decaBDE for any use after December 31, 2013, EPA would promulgate the test rule and they would be subject to the test rule requirements.

X. Economic Considerations

A. SNUR

The proposed amendment to the SNUR would require persons intending to engage in significant new use to submit a SNUN, incurring an estimated submission cost of $8,143 per chemical substance, plus other costs (Ref. 70). In addition to the firms that make a SNUN submission, the proposed amendments to the SNUR may also impact firms that do not make a submission. By avoiding a significant new use, a firm can avoid submission and testing costs but may incur other compliance costs. The firm may also incur ''hidden'' costs; for example, it could forego profitable opportunities to use the chemical substance in an application that would be a significant new use or limit production volume to avoid a significant new use. Costs are estimated at the firm level and reflect the burden of a SNUR on the firms that make a submission. The hidden costs to the firms that do not make a submission are not quantified. EPA receives only a handful of SNUNs per year due to SNURs. However, the number of firms affected by not making submissions to EPA is not known; therefore, costs are not aggregated across the affected entities.

B. Test Rule

EPA has prepared an economic assessment entitled ''Economic Impact Analysis for the Proposed Section 4 Test Rule for c-Pentabromodiphenyl Ether, c-Octabromodiphenyl Ether, and c-Decabromodiphenyl Ether'' (Ref. 71), a copy of which has been placed in the docket for this rule. The economic analysis evaluates the costs associated with the testing that would be required by a final test rule. The analysis looks

at costs due to testing all three mixtures and to each mixture separately. The total costs to industry of compliance, including testing and administrative costs, for all three mixtures are estimated under the low- and high-cost scenarios to be $9.68 million and $15.1 million, respectively. The testing cost (not including administrative costs) to comply with the test rule requirements for c-pentaBDE or c-octaBDE under the low- and high-cost scenarios would be $2.8 million and $4.7 million, respectively. The testing cost (not including administrative costs) to comply with the test rule requirements for c-decaBDE under the low- and high-cost scenarios would be $1.8 million and $2.5 million, respectively. (Ref. 71) These costs would only be incurred if there were entities that manufacture or process c-pentaBDE, c-octaBDE, or c-decaBDE, including in articles, after the effective date of the test rule.

Currently, there are no known entities that manufacture or process c-pentaBDE or c-octaBDE in the United States except as impurities, so an economic impact analysis could not be done for these two chemical substances.

EPA has identified six ultimate parent companies that manufacture or import c-decaBDE in the United States. The total annualized compliance costs for decaBDE are estimated to be, under low- and high-cost scenarios, $264,582 and $360,218, respectively. To evaluate the potential for an adverse economic impact of testing on manufacturers and importers of c-decaBDE, EPA employed an initial screening approach that estimated the impact of testing requirements as a percentage of c-decaBDE's sale price. This measure compares annual revenues from the sale of a mixture to the annualized compliance cost for that mixture to assess the percentage of testing costs that can be accommodated by the revenue stream generated by that mixture over a number of years. Compliance costs include costs of testing and administering the testing, as well as reporting costs. In addition, they include the estimated cost of the TSCA section 12(b) export notification requirements, which, under the final rule, would be required for the first export to a particular country of a mixture subject to the rule, estimated to range from $26.86 per notice to $85.70 per notice (Ref. 70). These export notification requirements (included in the total and annualized cost estimates) that would be triggered by the final rule are expected to have a negligible impact on exporters.

Annualized compliance costs divide testing expenditures into an equivalent, constant yearly expenditure over a longer period of time. To calculate the percent price impact, testing costs (including laboratory and administrative expenditures) are annualized over 15 years using a 7% discount rate. These annualized testing costs are then divided by the estimated annual revenue of the mixture to derive a cost-to-sales ratio.

For five companies manufacturing or importing c-decaBDE, the cost-to-sales ratios is 3% or less. One company was identified as a small business by TSCA's employment-based definition and has a cost-to-sales ratio greater than 3%. Mixtures for which the price impact is expected to exceed 1% of the revenue from that chemical substance have a higher potential for adverse economic impact. However, EPA also compared the annualized cost of testing c-decaBDE to company revenue because, in some cases, companies may choose to use revenue sources other than the profits from the individual mixture to pay for testing. EPA estimates that the costs of testing will exceed 1% of company revenue for only one of the affected companies, i.e., the company identified as a small business.

While processors are legally subject to this test rule if they process c-decaBDE after December 31, 2013, processors of c-decaBDE would be required to comply with the requirements of the rule only if they are directed to do so by EPA as described in 40 CFR 799.5350(c)(6) and (c)(8) of the proposed regulatory text. EPA would only require processors to test if no subject person in Tier 1 or Tier 2A has submitted a notice of its intent to conduct testing, or if under 40 CFR 790.93, a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data to EPA. Because processors would not need to comply with the rule initially if there are persons in Tiers 1 or 2A subject to the rule, the economic assessment does not address processors.

The benefits resulting from this proposed test rule are discussed qualitatively in the ''Economic Impact Analysis for the Proposed Section 4 Test rule for c-Pentabromodiphenyl Ether, c-Octabromodiphenyl Ether, and c-Decabromodiphenyl Ether'' (Ref. 71). EPA believes the major benefits of the test rule will be the development of hazard information on these chemical substances and the use of this information by the public, industry, and government.

XI. Request for Public Comment

A. Solicitation of Comments on the Proposed Amendments to the SNUR

1. EPA welcomes comments on any aspect of the proposed amendments to the SNUR, but is especially interested in comments regarding the possibility that manufacture and processing for some uses of decaBDE may continue after December 31, 2013. The Agency seeks information on such uses.

2. EPA is projecting c-decaBDE will no longer be available and that processors will discontinue their activities by December 31, 2013. Should EPA assume that processors will continue their activities beyond that date? For example, should EPA assume that processors will continue their activities for 6 months after manufacture of decaBDE ceases? Should EPA designate processing of decaBDE after June 30, 2014, or some other date, a significant new use?

3. EPA welcomes comments on the designation of a significant new use of tetraBDE, pentaBDE, hexaBDE, heptaBDE, octaBDE, and nonaBDE as manufacture and processing for any use including in articles after December 31, 2013.

4. EPA is proposing to make inapplicable the article exemption for SNURs at 40 CFR 721.45(f). A person who intends to process a chemical substance identified in that section as part of an article, other than as an impurity, would not be exempt from submitting a SNUN. EPA welcomes comment on this proposed course of action.

5. EPA requests comment on when to finalize the proposed amendments to the SNUR. Should they be finalized before or after the phase-out of decaBDE?

6. EPA requests comment on whether the proposed significant new uses are ongoing and will still be ongoing after December 31, 2013.

B. Solicitation of Comments on the Proposed Test Rule

1. EPA is soliciting comment regarding additional information pertaining to potential exposure of the general population, consumers, and workers to c-pentaBDE, c-octaBDE, and c-decaBDE. Also, the Agency solicits comment regarding additional information pertaining to environmental releases of any of these three PBDE mixtures.

2. EPA is soliciting comments which identify existing studies that may satisfy the data needs identified in the proposed test rule. To the extent that data relevant to the testing specified in

this proposed test rule are known to exist, EPA strongly encourages the submission of this information as comments to the proposed test rule. Such data submitted to EPA must be in the form of full copies of unpublished studies or full citations of published studies, and accompanied by a robust summary (Ref. 67). To the extent that studies proposed in this action are currently available, and the data are judged sufficient by EPA, testing for the endpoint/mixture combination will not be required in a final test rule.

3. EPA is soliciting comment on what test substances should be required for pentaBDE, octaBDE, and decaBDE. EPA is proposing that the test substances be the representative commercial forms with the percent congener composition identified by the test sponsor(s). Instead, should the test substances be the 99% pure pentaBDE, octaBDE, and decaBDE with an isomer composition identified for each?

4. EPA is soliciting comment on whether a purity level of 99% or greater can be attained for pentaBDE, octaBDE, and decaBDE.

5. EPA is soliciting comment on whether the descriptions in the proposed regulatory text in 40 CFR 799.5350(a) of the commercial mixtures to be tested adequately encompass the range of commercial forms of pentaBDE, octaBDE, and decaBDE that might be produced.

6. EPA is soliciting comment on whether, for the purpose of the testing proposed in this proposed rule, a single commercial form each of pentaBDE, octaBDE, and decaBDE can be representative of the possible variations of those commercial mixtures. If not, should more than one commercial form each of pentaBDE, octaBDE, and decaBDE be tested? How should those forms be determined?

7. EPA is soliciting comment on whether testing should be required of tetraBDE, pentaBDE, hexaBDE, heptaBDE, octaBDE, nonaBDE, and decaBDE comparable to that proposed for c-pentaBDE, c-octaBDE, and c-decaBDE if they are present in commercial PBDE products.

8. EPA is also soliciting comment on the proposed test guidelines, the proposed requirement for submission of robust summaries, the proposed deadlines to submit final reports, and the economic impact analysis detailing the burdens and costs that would result from complying with a final test rule.

9. The Agency invites comment on the potential use of voluntary consensus standards in the proposed test rule, and, specifically, invites the public to identify potentially applicable voluntary consensus standard(s) and to explain why such voluntary consensus standard(s) should be used here.

10. EPA is interested in receiving comments on whether the Agency should consider establishing an alternate definition for small business to use in the small entity impact analyses for future TSCA section 4(a) test rules, and what size cutoff may be appropriate.

11. EPA is soliciting comment on whether, in a future rulemaking, persons who manufacture or process c-PBDEs contained in articles as impurities should be required to conduct testing. EPA also solicits comment on whether persons who manufacture or process c-PBDEs as impurities not contained in articles should be required to test.

XII. References

As indicated under **ADDRESSES**, a docket has been established for this proposed rule under docket ID number EPA–HQ–OPPT–2010–1039. The following is a listing of the documents that have been placed in the docket. The docket includes information considered by EPA in developing this proposed rule, including the documents listed in this unit, which are physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, please consult the appropriate technical person listed under **FOR FURTHER INFORMATION CONTACT**. The docket is available for review as specified under **ADDRESSES**.

A. Documents Cited in the Preamble and Available in the Docket

1. EPA. Significant New Use Rule for Certain Polybrominated Diphenylethers. 40 CFR 721.10000.

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9. Albermarle Corporation. Letter from David W. Clary, Albemarle Corp., to Lisa P. Jackson, EPA. EPA–Industry DecaBDE Phase-Out Initiative. December 15, 2009.

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15. EPA, 2008b. Toxicological Review of 2, 2', 4 ,4',5–Pentabromodiphenyl Ether (BDE–99), EPA/635/R–07/006F. June 2008.

16. EPA, 2008c. Toxicological Review of 2, 2', 4, 4', 5, 5'-Hexabromodiphenyl Ether (BDE–153), EPA/635/R–07/007F. June 2008.

17. EPA, 2008d. Toxicological Review of Decabromodiphenyl Ether (BDE–209), EPA/635/R–07/008F. June 2008.

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B. Documents Not Cited in the Preamble and Available in the Docket

The following documents are not cited in the preamble but are in the docket because they are considered germane to this proposed rule.

• Jones-Otazo, H.A.; Clarke, J.; Diamond, M.L.; Archbold, J.; Ferguson, G.; Harner, T.; Richardson, S.M.; Jakeryan J.; and Wilford, B.Y. Is House Dust the Missing Exposure Pathway for PBDEs? An Analysis of the Urban Fate and Human Exposure to PBDEs. *Environmental Science & Technology.* 39:5121–5130. 2005.

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• Chemtura. Letter from Robert Campbell to Jim Willis, Director, Chemical Control Division (CCD), OPPT, EPA. January 6, 2006.

• Arnold & Porter LLP. Letter from Lawrence Culleen to Ward Penberthy, CCD, OPPT, EPA. June 25, 2010.

XIII. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this action has been designated a ''significant regulatory action'' by the Office of Management and Budget (OMB). Accordingly, EPA submitted this action to OMB for review and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA has prepared two economic analyses of the potential impacts associated with this action. A copy of these economic analyses, entitled ''Economic Impact Analysis for the Proposed Section 4 Test Rule for c-Pentabromodiphenyl Ether, c-Octabromodiphenyl Ether, and c-Decabromodiphenyl Ether'' (Ref. 71) and ''Economic Analysis of the Proposed Significant New Use Rule for Polybrominated Diphenyl Ethers'' (Ref. 70), are available in the docket for this proposed rule and are summarized in Unit X.

B. Paperwork Reduction Act

This proposed rule does not impose any paperwork collection requirements that would require additional review and/or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The information collection requirements related to the proposed SNUR (i.e., the submission of a SNUN) have been approved by OMB pursuant to PRA under OMB control number 2070–0038 (EPA ICR No. 1188). The information collection requirements related to the proposed test rule have been approved by OMB pursuant to the PRA under OMB control number 2070–0033 (EPA ICR No. 1139). Although the test rule information collection activities are approved, the additional burden associated with this test rule is not yet covered by the approved ICR until the final rule is effective. In the context of developing a new test rule, the Agency must determine whether the total annual burden covered by the approved ICR needs to be amended to accommodate the burden associated with the new test rule. If so, the Agency must submit an Information Correction Worksheet (ICW) to OMB and obtain OMB approval of an increase in the total approved annual burden in the OMB inventory.

The information collection activities related to export notification under TSCA section 12(b)(1) are already approved under OMB control number 2070–0030 (EPA ICR No. 0795). This rulemaking does not propose any new or changes to the export notification requirements, and is not expected to result in any substantive changes in the burden estimates for EPA ICR No. 0795 that would require additional review and/or approval by OMB.

Under PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to approval under PRA, unless it displays a currently valid OMB control number. The OMB control numbers for the EPA regulations codified in chapter 40 of the CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

To submit a SNUN, EPA estimates that the industry burden hours per chemical to be 92 hours (Ref. 70). The standard chemical testing program involves the submission of letters of intent to test (or exemption applications), study plans, semi-annual progress reports, test results, and administrative costs. For this proposed rule, EPA estimates the total industry burden hours for all three mixtures to be 37,074 hours (56,717 hours) for the low (high) cost scenario. Average industry burden hours per mixture are estimated to be 12,358 hours (18,906 hours) in the low (high) cost scenario (Ref. 70).

The estimated burden of the information collection activities related to export notification is estimated to average 1 burden hour for each mixture/country combination for an initial notification and 0.5 hours for each subsequent notification (Ref. 70). In estimating the total burden hours approved for the information collection activities related to export notification, the Agency has included sufficient burden hours to accommodate any

export notifications that may be required by the Agency's issuance of final test rules. As such, EPA does not expect to need to request an increase in the total burden hours approved by OMB for export notifications.

As defined by PRA and 5 CFR 1320.3(b), ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments to EPA as part of your overall comments on this proposed action in the manner specified under **ADDRESSES**. In developing the final rule, the Agency will address any comments received regarding the information collection requirements contained in this proposed rule.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* after considering the potential economic impacts of this proposed rule on small entities, the Agency hereby certifies that this proposed rule does not have a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analyses for this proposed rule (Refs. 70 and 71), which are summarized in Unit X., and copies of which are available in the docket for this proposed rule. The following is a brief summary of the factual basis for this certification.

Under RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined in accordance with RFA as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on the industry profile that EPA prepared as part of the economic analysis for this rulemaking (Ref. 71), EPA has determined that this proposed rule is not expected to impact any small not-for-profit organizations or small governmental jurisdictions. As such, the Agency's analysis presents only the estimated potential impacts on small business.

Two factors are examined in EPA's small entity impact analysis (Ref. 71) in order to characterize the potential small entity impacts of this proposed rule on small business:

- The size of the adverse economic impact (measured as the ratio of the cost-to-sales or cost-to-revenue).
- The total number of small entities that experience the adverse economic impact.

Section 601(3) of RFA establishes as the default definition of ''small business'' the definition used in section 3 of the Small Business Act, 15 U.S.C. 632, under which the SBA establishes small business size standards (13 CFR 121.201). For this proposed rule, EPA has analyzed the potential small business impacts using the size standards established under this default definition. The SBA size standards, which are primarily intended to determine whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101), ''seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.'' (13 CFR 121.102(b)). See section 632(a)(1) of the Small Business Act. In analyzing potential impacts, the RFA recognizes that it may be appropriate at times to use an alternate definition of small business. As such, section 601(3) of RFA provides that an agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. Even though the Agency has used the default SBA definition of small business to conduct its analysis of potential small business impacts for this proposed rule, EPA does not believe that the SBA size standards are generally the best size standards to use in assessing potential small entity impacts with regard to TSCA section 4(a) test rules.

The SBA size standard is generally based on the number of employees an entity in a particular industrial sector may have. For example, in the chemical manufacturing industrial sector (i.e., NAICS code 325 and NAICS code 324110), approximately 98% of the firms would be classified as small businesses under the default SBA definition. The SBA size standard for 75% of this industry sector is 500 employees, and the size standard for 23% of this industry sector is either 750; 1,000; or 1,500 employees. When assessing the potential impacts of test rules on chemical manufacturers, EPA believes that a standard based on total annual sales may provide a more appropriate means to judge the ability of a chemical manufacturing firm to support chemical testing without significant costs or burdens.

EPA is currently determining what level of annual sales would provide the most appropriate size cutoff with regard to various segments of the chemical industry usually impacted by TSCA section 4(a) test rules, but has not yet reached a determination. As stated above, therefore, the factual basis for the RFA determination for this proposed rule is based on an analysis using the default SBA size standards. Although EPA is not currently proposing to establish an alternate definition for use in the analysis conducted for this proposed rule, the analysis for this proposed rule also presents the results of calculations using a standard based on total annual sales (40 CFR 704.3). EPA is interested in receiving comments on whether the Agency should consider establishing an alternate definition for small business to use in the small entity impact analyses for future TSCA section 4(a) test rules, and what size cutoff may be appropriate.

The SBA has developed 6 digit NAICS code-specific size standards based on employment thresholds. These size standards range from 500 to 1,500 employees for the various 6 digit NAICS codes that are potentially impacted (Ref. 71). For a conservative estimate of the number of small businesses affected by this rule, the Agency chose an employment threshold of less than 1,500 employees for all businesses regardless of the NAIC-specific threshold to determine small business status.

For manufacturers and importers of decaBDE covered by this proposed rule, six parent companies (ultimate corporate entity, or UCE) were

identified and sales and employment data were obtained for companies where data were publicly available. Parent company sales data were used to identify companies that qualified as a ''small business'' for purposes of the RFA analysis. Based on the TSCA employment standard (1,500 employees or less), one company was identified as small. This company had cost-to-sales ratios of greater than 3% under both the low- and high-cost scenarios. Given these results, the Agency has determined that there is not a significant economic impact on a substantial number of small entities as a result of this proposed rule, if finalized.

The estimated cost of the TSCA section 12(b)(1) export notification, which, as a result of the final rule, would be required for the first export to a particular country of a mixture subject to the rule, is estimated to be $85.70 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $26.86 for each subsequent export notification submitted by that exporter (Ref. 70). EPA has concluded that the costs of TSCA section 12(b)(1) export notification would have a negligible impact on exporters of the mixtures in the final rule, regardless of the size of the exporter.

Any comments regarding the impacts that this action may impose on small entities, or regarding whether the Agency should consider establishing an alternate definition of small business to be used for analytical purposes for future test rules and what size cutoff may be appropriate, should be submitted to the Agency in the manner specified under **ADDRESSES**.

D. Unfunded Mandates Reform Act

This action does not contain any Federal mandates for State, local, or Tribal Governments or the private sector under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538. EPA has determined that this regulatory action will not result in annual expenditures of $100 million or more for State, local, and Tribal Governments, in the aggregate, or for the private sector. For the private sector, it is estimated that the total aggregate costs of this proposed rule would be $15.1 million. The total annualized costs of this proposed rule to the private sector are estimated to be $5.34 and 5.75 million using a 3% and 7% discount rate over 3 years (high cost scenario). In addition, since EPA does not have any information to indicate that any State, local, or Tribal Government manufactures or processes the mixtures covered by this action such that this rule would apply directly to State, local, or Tribal governments, EPA has determined that this proposed rule would not significantly or uniquely affect small governments. Accordingly, this proposed rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 13132

Under Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have ''federalism implications'' because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. The proposed test rule would establish testing and recordkeeping requirements that apply to manufacturers (including importers) and processors of certain mixtures. The proposed amendments to the SNUR would establish notification and submission requirements that apply to manufacturers (including importers) before certain chemicals may be manufactured or imported. Because EPA has no information to indicate that any State or local government manufactures or processes the chemical substances and mixtures covered by this action, the proposed SNUR-Test Rule does not apply directly to States and localities and will not affect State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175

Under Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have any effect on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in the Executive Order. As indicated previously, EPA has no information to indicate that any tribal government manufactures or processes the chemical substances or mixtures covered by this action. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045

EPA interprets Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of Executive Order 13045 has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. Nevertheless, the information obtained by this proposed rule could inform the Agency's decisionmaking process regarding mixtures to which children may be disproportionately exposed. The proposed test rule would establish testing and recordkeeping requirements that apply to manufacturers (including importers) and processors of certain mixtures, and would result in the development of data about those mixture substances that can subsequently be used to assist the Agency and others in determining whether the mixtures in the proposed test rule present potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks. Similarly, the proposed amendments to the SNUR would allow EPA to review available information to identify and take action to address potential risk because it would require manufacturers to submit notification and hazard information in the form of a SNUN to EPA before a chemical may be manufactured or imported.

H. Executive Order 13211

This action is not a ''significant energy action'' as defined in Executive Order 13211, entitled ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy as described in the Executive Order.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB,

explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed test rule involves technical standards because it proposes to require the use of particular test methods. If the Agency makes findings under TSCA section 4(a), EPA is required by TSCA section 4(b) to include specific standards or test methods that are to be used for the development of the data required in the test rules issued under TSCA section 4. For some of the testing that would be required by the final rule, EPA is proposing the use of voluntary consensus standards issued by ASTM International which evaluate the same type of toxicity as the TSCA 799 test guidelines and OECD test guidelines, where applicable. Copies of the ASTM International standards referenced in the proposed regulatory text at 40 CFR 799.5350 (h)(2)(i) through (h)(2)(v) have been placed in the docket for this proposed rule where they are available for reading, but not copying. You may obtain copies of the ASTM International standards from the ASTM International, 100 Bar Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, or by calling (877) 909–ASTM, or at: *http://www.astm.org.* In the final rule, EPA intends to seek approval from the Director of the Federal Register for the incorporation by reference of the ASTM International standards used in the final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

EPA is not aware of any potentially applicable voluntary consensus standards which evaluate prenatal developmental toxicity, 2-generation reproductive toxicity, developmental neurotoxicity, immunotoxicity, or chronic toxicity/carcinogenicity, or screen for neurotoxicity which could be considered in lieu of the TSCA 799 test guidelines, 40 CFR 799.9370, 799.9380, 799.9630, 799.9780, 799.9430, and 799.9620, respectively, upon which the test standards in the proposed rule are based.

EPA is also not aware of any potentially applicable voluntary consensus standards which evaluate anaerobic aquatic metabolism, biodegradation in anaerobic digester sludge, or photolytic degradation in the indoor environment. As a result, EPA is proposing the use of three guidelines which are published in full at 40 CFR 795.25, 795.30, and 795.65.

The Agency invites comment on the potential use of voluntary consensus standards in the proposed test rule, and, specifically, invites the public to identify potentially applicable consensus standard(s) and to explain why such standard(s) should be used here.

J. Executive Order 12898

This proposed rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities that require special consideration by the Agency under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). The Agency believes that the information collected under this proposed rule, if finalized, will assist EPA and others in determining the potential hazards and risks associated with the mixtures covered by this proposed rule. Although not directly impacting environmental justice-related concerns, this information will enable the Agency to better protect human health and the environment, including in low-income and minority communities.

K. Executive Order 12630

EPA has complied with Executive Order 12630, entitled ''Government Actions and Interference with Constitutionally Protected Property Rights (Takings)'' (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

L. Executive Order 12988

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled ''Civil Justice Reform'' (61 FR 4729, February 7, 1996).

List of Subjects

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Premanufacture notification (PMN), Reporting and recordkeeping requirements.

40 CFR Part 795

Environmental protection, Chemicals, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

Dated: March 20, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. Revise § 721.10000 to read as follows:

§ 721.10000 Certain polybrominated diphenylethers.

(a) *Chemical substances subject to significant new use reporting.* (1) The chemical substances identified as tetrabromodiphenyl ether (tetraBDE) (CAS No. 40088–47–9; benzene, 1,1′-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether (pentaBDE) (CAS No. 32534–81–9; benzene, 1,1′-oxybis-, pentabromo deriv.), hexabromodiphenyl ether (hexaBDE) (CAS No. 36483–60–0; benzene, 1,1′-oxybis-, hexabromo deriv.), heptabromodiphenyl ether (heptaBDE) (CAS No. 68928–80–3; benzene, 1,1′-oxybis-, heptabromo deriv.), octabromodiphenyl ether (octaBDE) (CAS No. 32536–52–0; benzene, 1,1′-oxybis-, octabromo deriv.), and nonabromodiphenyl ether (nonaBDE) (CAS No. 63936–56–1; benzene, pentabromo(tetrabromophenoxy)-), or any combination of these chemical substances resulting from a chemical reaction are subject to reporting under this section for the significant new uses described in paragraph (b)(1) of this section.

(2) Decabromodiphenyl ether (decaBDE) (CAS No. 1163–19–5; benzene, 1,1′-oxybis[2,3,4,5,6-pentabromo-) is subject to reporting under this section for the significant new uses described in paragraph (b)(2) of this section.

(b) *Significant new uses.* (1) The significant new uses for chemical substances identified in paragraph (a)(1) of this section are:

(i) Manufacture or import for any use on or after January 1, 2005.

(ii) Processing for any use after December 31, 2013.

(2) The significant new uses for the chemical identified in paragraph (a)(2) of this section are:

(i) Manufacturing, importing, or processing for any use after December 31, 2013.

(ii) [Reserved]

(c) *Specific requirements.* The provisions of subpart A of this part apply to this section, except as modified by this paragraph.

(1) *Revocation of certain notification exemptions.* The provisions of § 721.45(f) do not apply to this section. A person who imports or processes a chemical substance identified in this section as part of an article is not exempt from submitting a SNUN.

(2) [Reserved]

PART 795—[AMENDED]

3. The authority citation for part 795 continues to read as follows:

Authority: 15 U.S.C. 2603.

4. Add § 795.25 to subpart B to read as follows:

§ 795.25 Anaerobic aquatic metabolism of decabromodiphenyl ether.

(a) *Source.* OCSPP Series 835—Fate, Transport and Transformation Test Guidelines, OCSPP Test Guideline 835.4400—Anaerobic Aquatic Metabolism.

(b) *Introduction.* Chemicals can enter shallow or deep surface waters by a wide variety of routes including direct application, run-off, groundwater seepage drainage, waste disposal, industrial or agricultural effluent, and atmospheric deposition. This study plan describes a laboratory test method to assess transformation of the test substance in anaerobic aquatic sediment systems. ^{14}C-labeled decabromodiphenyl ether (decaBDE) shall be used to help ensure mass balance over time.

(c) *Objectives.* The objectives of the study are to:

(1) Measure the rate of transformation of the test substance, decaBDE.

(2) Identify and quantify all detectable degradation products.

(3) Identify and quantify the transformation pathways and rate of formation and degradation of intermediate products in the water, vapor, and sediment phases.

(4) Measure the distribution of the test substance and degradation products and intermediates within each phase in the test system.

(d) *Experimental design.* The test shall be conducted using six sediments and their associated waters at two concentrations (one trace; the other significantly higher), using ^{14}C-labeled test substance. Sediments shall be selected to include a variety of sediment types and shall include sediments known to contain polybrominated diphenyl ethers (PBDEs) and polychlorinated biphenyls (PCBs).

(1) Untreated live and killed controls and test substance-dosed biotic and abiotic systems shall be prepared for each sediment type. Based on published studies on the biodegradation of decaBDE in sediments, the half-life of decaBDE may be long. Tokarz (2008) reported sediment half-lives ranging from 6 to 50 years with an average of 14 years. Therefore, it is expected that untreated control, test substance-dosed live, and killed control systems will be incubated at approximately 20 °C for at least 36 months. However, the actual study duration shall be dependent on the analytical results for initial sampling periods. The total duration and interval for later samples may be changed depending on the observed rate of degradation.

(2) Duplicate test vessels for each treatment (i.e., treated and control) option, each test substance concentration and each sediment shall be sacrificed at appropriate time intervals. Test substance-dosed systems shall be used for quantification of parent material and degradation products. Untreated controls shall be used to determine background levels of the parent material and other PBDEs over time. Sampling shall be performed at time zero and seven times thereafter. Additional sample vessels may be prepared for additional analyses, if necessary. These vessels shall be sampled at the request of the sponsor in consultation with EPA. Additional untreated chambers shall be prepared for use as matrix fortification samples, water-sediment characterizations, and viability controls, as necessary.

(e) *Materials and methods*—(1) *OCSPP test guidelines.* The test system and study conditions are selected to comply with the OCSPP Series 835—Fate, Transport and Transformation Test Guidelines, OCSPP Test Guideline 835.4400 (at paragraph (k)(2) of this section) with appropriate modifications, if any, for decaBDE.

(2) *Test substance.* Information on the characterization of test, control or reference substances is required by Good Laboratory Practice (GLP) Standards and Principles. Ring-labeled, ^{14}C-labeled test substance shall be used. The sponsor is responsible for providing the test substance and verification that it has been characterized according to GLP requirements prior to its use in the study. If verification of GLP test substance characterization is not provided, it shall be noted in the compliance statement of the final report. The sponsor is responsible for all information related to the test substance including the following descriptions of the radiolabeled form of the test substance: Name, lot number, specific activity, radiochemical purity, sample form, solubility in water, and storage conditions. For the nonlabeled form of the test substance, the sponsor is responsible for the following descriptions: Name, lot number, purity, sample form, solubility in water, and storage conditions. The sponsor must agree to accept any unused test substance and/or test substance containers remaining at the end of the study.

(3) *Test substance preparation and administration.* A dispersal powder of test substance shall be prepared using an inert carrier (e.g., silica gel, quartz sand). Radiolabeled test substance shall be placed in a round bottom flask and dissolved with an appropriate solvent (i.e., tetrahydrofuran). The inert carrier shall be added to the flask and the solvent shall be evaporated using a rotary evaporator until the carrier is dry. This method of creating a dispersal powder is an appropriate route of administration for poorly water-soluble materials. Prior to the test, characteristics of sorption of the test substance on various carriers shall be evaluated.

(4) *Sediments and associated waters.* Sediments and associated water shall be obtained from at least six different sites known or suspected to be contaminated with PBDEs including, but not limited to decaBDE, and PCBs. Selection and approval of the collection sites shall be the responsibility of the study Sponsor and must be approved by EPA.

(i) Sediments shall be collected and handled using strict anaerobic procedures (for example see Loveley and Phillips (1986) at paragraph (k)(1) of this section). They shall be immediately sealed under nitrogen and transported and stored to maintain anaerobic conditions. All collection containers shall be stored in a nitrogen atmosphere until and during use. In addition, the containers shall be purged with nitrogen in the field after collection. The anaerobic sediment and associated waters shall be taken from the same location. The reduction potential or Redox potential (Eh) of the sediment shall be measured prior to collection and should be less than −150 millivolt (mV). The dissolved oxygen concentration of the overlying water shall be measured and should be less than 0.5 milligram/Liter (mg/L). The sediments and water shall be transported to the lab under anaerobic conditions. The sediments and associated waters may be stored at room temperature in sealed containers for up to 7 days. If longer storage is necessary, the sediments and associated waters

may be stored in sealed containers in a refrigerator for up to 4 weeks. Prior to use, the sediment shall be settled, then separated from the water by decanting. The settled sediment shall be wet-sieved using a 2 millimeter (mm) sieve. All handling of anaerobic sediment after collection and prior to testing shall be performed under a constant flow of nitrogen. At a minimum, the following properties of the sediment shall be determined:

(A) Particle size (i.e., percentage of sand, silt, and clay).

(B) Organic carbon content.

(C) Microbial biomass.

(D) Nitrate, sulfate and iron species.

(E) Percent water.

(F) Microbial biomass (fumigation extraction method).

(G) pH.

(H) Concentration of humic material.

(I) Concentrations of electron acceptors including methane, nitrate, nitrite, sulfate, sulfide, and iron species.

(ii) Similar characterization of the aqueous phase shall be performed prior to the start of the test. Prior to the test, resazurin shall be added to the water at a nominal concentration of 1 mg/L. The water shall be sparged with nitrogen until a light pink color is obtained and the dissolved oxygen concentration is less than 0.1 mg/L. Redox conditions in the test vessels shall be monitored by measuring dissolved hydrogen gas and Eh at each sampling. The test vessels shall be stored under nitrogen or other inert atmosphere throughout the test.

(5) *Test apparatus and conditions.* The test vessels shall be 1–L glass bottles sealed with butyl rubber septa and screw caps. Prior to beginning the study, the integrity of the test vessels and caps and their ability to maintain anaerobic conditions and prevent leakage of hydrogen (H_2) and other gas species for long periods shall be verified. The test vessels shall be identified by project number, test substance identity (ID), test concentration, and a unique identifier. The test vessels shall be incubated under an atmosphere of nitrogen at approximately 20 °C in an anaerobic glove box. Test temperatures shall be recorded each working day using a minimum/maximum thermometer. The need for venting of the test systems shall be evaluated prior to the start of the study. The procedure for venting and frequency shall be added to the study protocol, if necessary, prior to beginning the study.

(6) *Preparation of the test chambers and acclimation.* Test chambers shall be prepared in an anaerobic glove box or under a constant flow of nitrogen. Appropriate amounts of sediment and water shall be added to each test chamber so the resulting water: Sediment volume ratio is between approximately 1:3 and 1:4. The depth of the sediment layer shall depend upon the characteristics of the specific sediment. As a practical example, 200 gram (g) dry weight equivalent of sediment and 250 milliliter (mL) of associated water typically result in a sediment layer of 6.5 centimeter (cm) and a water layer of 2.5 cm. Amounts of sediment and water to be added may be determined prior to the preparation of the test chambers. The sediment/water samples shall be acclimated under the same conditions as in the test for at least 7 days prior to the start of the test.

(7) *Characterization of water-sediment systems.* The pH, total organic carbon concentration, dissolved oxygen concentration, Eh of the water and sediment (including microbial biomass), and other parameters/characteristics of the water-sediment media in the test vessels shall be measured at each sampling period noted in Table 1 of this paragraph. The sediment and water shall be kept anaerobic with an Eh lower than –100 mV.

TABLE 1—MEASUREMENTS AT VARIOUS STAGES OF THE TEST PROCEDURE

Parameter	Stage of test procedure					
	Field sampling	Post-handling	Start of acclimation	Start of test	During test	End of test
Water:						
Origin/source	X					
Temperature	X					
pH	X		X	X	X	X
Total organic carbon (TOC) concentration			X	X		X
Oxygen (O_2) concentration	X		X	X	X	X
Eh (Redox potential)			X	X	X	X
Sediment:						
Origin/Source	X					
Depth of layer	X					
pH		X	X	X	X	X
Particle size		X				
TOC		X	X	X		X
Microbial biomass		X		X		X
Eh	X		X	X	X	X

(8) *Application of the test substance.* Chambers containing the sediment/water systems shall be fortified at the start of the test with the test substance by applying the test material to the water layer. Methods for mixing the test material with sediment shall be evaluated prior to the start of the test. Methods to be evaluated shall include but are not limited to mixing by hand and the use of roller and tumbling mixers.

(9) *Preparation of abiotic systems.* Test substance-dosed abiotic controls shall be heat-sterilized (autoclaved three times at 120 °C for 60 minutes (min) on 3 consecutive days). A preliminary evaluation of the effects of heat sterilization on the test substance shall be conducted prior to the start of the study. If this method is found to be unsatisfactory, irradiation shall be used to sterilize the test systems.

(10) *Sample collection.* Proposed sampling intervals are day 0 and months 3, 6, 12, 18, 24, 30, and 36. If analysis of initial sampling results suggests more rapid degradation, the sampling interval may be modified after consultation with EPA using procedures specified in 40 CFR 790.50. The actual sampling intervals shall be documented in the

study records and in the final report. Duplicate test vessels for each treatment (i.e., treated and control) option, each test substance concentration and each sediment shall be sacrificed at appropriate time intervals.

(11) *Headspace analysis.* The headspace of the treated systems shall be analyzed for radiolabeled mineralization products including $^{14}CO_2$- hydrocarbons and $^{14}CO_2$ and $^{14}CH_4$ using purge and trap methods. At each sampling time prior to extraction of the test system, the septum shall be pierced using a needle connected to an appropriate trap and the vessel headspace shall be purged and trapped using a hydrocarbon trap followed by a mineralization trapping apparatus. The headspace within each of test chamber shall be continuously purged with a flow of nitrogen for a minimum of 1 hour and passed through a gas collection system consisting of a hydrocarbon trap and two sets of carbon dioxide (CO_2) traps and a combustion apparatus. The displaced gases shall initially pass through a sorption tube containing appropriate solid phase to trap any hydrocarbon degradation products present, then one empty bottle followed by two more bottles, each containing approximately 100 mL of 1.5 normal (N) potassium hydroxide (KOH) (CO_2 trapping solution), followed by another empty bottle. The gas shall be combined with a flow of oxygen and channeled through a quartz column that is packed with cupric oxide and maintained at approximately 800 °C in a tube furnace to combust methane to CO_2. Because Br may poison the surface of the cupric oxide, a preliminary experiment shall be run to test this, and the protocol adjusted if necessary. The gas exiting the combustion column shall be passed through an empty bottle followed by two additional CO_2 traps.

(12) *Sample processing and analysis for total radioactivity.* After purging, the overlying water shall be removed with minimal disturbance to the sediment and assayed for total radioactivity by liquid scintillation counting (LSC). Sediment samples shall be analyzed using combustion followed by LSC to determine the total amount of radioactivity associated with the sediment. Water and sediment samples shall be extracted following aggressive methods designed to extract the maximum amount of parent and degradation products from the sediment. These shall be evaluated and verified and approved by EPA prior to the start of the study. These methods shall be able to detect and quantify parent and degradates at least as well as those reported in the literature for PBDE analysis. The extraction method shall be robust, for example sequential extraction by solvent washing, soxhlet extraction, and supercritical fluid extraction, but shall not substantially change the test substance or degradation products, or the structure of the matrix itself. Solvent extracts and extracted solids shall be analyzed to determine total residual radioactivity. Untreated controls shall be extracted in the same manner as the test substance treated systems.

(13) *Characterization of extracted radioactivity.* Water and sediment extracts from the treated and untreated systems shall be analyzed for radiolabeled test substance and degradation products using high performance liquid chromatography (HPLC) and gas chromatography (GC) with mass spectrometry (MS) and radiochemical detection. Methods of analysis shall be verified prior to the start of the study and shall be at least as sensitive and accurate as reported in the literature for analysis of PBDEs and products.

(14) *Quantification of test substance and degradation products.* Water and sediment extracts from the untreated controls and treated systems shall be analyzed for quantification of BDE–209 (decaBDE) and trace level lower brominated diphenyl ethers (BDEs) including but not limited to BDE–202 (octaBDE), BDE–197 (octaBDE), and BDE–201 (octaBDE), as well as, brominated dibenzofurans. This analysis shall be conducted using gas chromatography/electron capture negative chemical ionization mass spectrometry (GC/ECNI–MS). Expected limits of detection (LOD) and quantitation (LOQ) for reasonably anticipated products shall be determined and reported to EPA prior to starting the test. All debromination products shall be measured in each sample, including background and time zero samples, and both biotic systems and abiotic (inhibited) controls.

(15) *Viability controls.* The assessment of the metabolic activity of untreated sediment/water systems shall be conducted within 1 week of each sampling interval. Duplicate incubation vessels for each sediment, which have been incubated in parallel under the same conditions, shall be dosed at approximately 100 milligram/kilogram (mg/kg) sediment dry weight with a combination of radiolabeled and nonlabeled substance suitable (i.e., glucose, benzoic acid) for viability determination. The methods and procedures used shall be documented in the study protocol prior to beginning the study.

(16) *Treatment of results.* Total mass balance of radioactivity shall be calculated at each sampling interval. Results shall be reported as total and percentage of added radioactivity. The behavior of the test substance and major and minor metabolites in the whole system as well as water, gas, and sediment compartments shall be evaluated. Regression analysis of the percentage of test substance and major metabolites as a function of time shall be performed and the time for 50% degradation (D_T50) and the time for 90% degradation (D_T90) of the test substance and major metabolites shall be calculated, when possible. The ratio of BDE–209 (decaBDE) to all detected degradation products shall be determined. All analytical results and all raw data shall be submitted to EPA, including the mass of each analyte at each time.

(f) *Records to be maintained.* Records to be submitted to EPA shall include, but are not limited to, the following:

(1) The original signed protocol and any amendments.

(2) Identification and characterization of the test substance as provided by sponsor.

(3) Experiment initiation and termination dates.

(4) Stock solution concentration calculations and solution preparation.

(5) Inoculum source and pretreatment data.

(6) Results of LSC and HPLC and/or other analysis (e.g., GC or GC/ECNI–MS).

(7) Temperature data recorded during test period.

(8) Copy of final report.

(g) *Final report.* A final report of the results of the study shall be prepared and submitted to EPA. The final report shall include, but is not limited to the following, when applicable:

(1) Name and address of facility performing the study.

(2) Dates on which the study was initiated and completed.

(3) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(4) Identification and characterization of the test substance as provided by Sponsor.

(5) A summary and analysis of the data and a statement of the conclusions drawn from the analysis.

(6) A description of the transformations and calculations performed on the data.

(7) A description of the methods used and reference to any standard method employed.

(8) A description of the test system.

(9) A description of the preparation of the test solutions, the testing

concentrations, and the duration of the test.

(10) A description of sampling and analytical methods, including level of detection, level of quantification, and references.

(11) A description of the test results including measured values for individual PBDE congeners and PBDF homolog group.

(12) A description of all circumstances that may affect the quality or integrity of the data.

(13) The name of the study director, the names of other scientists or professionals, and the names of all supervisory personnel involved in the study.

(14) The signed and dated reports of each of the individual scientists or other professionals involved in the study, if applicable.

(15) The location where the raw data and final report are to be stored.

(16) A statement prepared by the Quality Assurance Unit listing the types of inspections, the dates that the study inspections were made and the findings reported to the Study Director and Management.

(17) A copy of all raw data including but not limited to chromatograms, lab notebooks and data sheets, etc.

(h) *Changes to the final report.* If it is necessary to make corrections or additions to the final report after it has been accepted, such changes shall be made in the form of an amendment issued by the Study Director. The amendment shall clearly identify the part of the study that is being amended and the reasons for the alteration. Amendments shall be signed and dated by the Study Director and Laboratory Quality Assurance Officer.

(i) *Changes to the protocol.* Planned changes to the protocol shall be in the form of written amendments signed by the Study Director and approved by the sponsor's representative and submitted to EPA using procedures in 40 CFR 790.50. Amendments shall be considered as part of the protocol and shall be attached to the final protocol. Any other changes shall be in the form of written deviations signed by the Study Director and filed with the raw data. All changes to the protocol shall be indicated in the final report. Changes to the test standard require prior approval from EPA using procedures in 40 CFR 790.55.

(j) *Good laboratory practices.* This study shall be conducted in accordance with the Good Laboratory Practice Standards (GLPs) for EPA and shall be consistent with the Organisation for Economic Co-operation and Development (OECD) Principles of Good Laboratory Practice. Each study conducted by the testing facility shall be routinely examined by the facility's Quality Assurance Unit for compliance with GLPs, Standard Operating Procedures (SOPs), and the specified protocol. A statement of compliance with GLPs shall be prepared for all portions of the study conducted by the testing facility. The sponsor is responsible for compliance with GLPs for procedures that may be performed by other laboratories (e.g., residue analyses). Raw data for all work performed at the testing facility and a copy of the final report shall be filed by project number in archives located on the facility's site or at an alternative location to be specified in the final report.

(k) *Literature cited in this section.* (1) Lovley, D.R. and Phillips, E.J.P. Organic matter mineralization with reduction of ferric iron in anaerobic sediments. *Applied and Environmental Microbiology.* 51:683–689. 1986.

(2) EPA. OCSPP Series 835—Fate, Transport and Transformation Test Guidelines. OCSPP Test Guideline 835.4400—Anaerobic Aquatic Metabolism. EPA 712–C–08–019. October 2008.

(3) Tokarz, J.A., III; Ahn, M.Y.; Leng, J.; Filley, T.R.; and Nies, L. Reductive debromination of polybrominated diphenyl ethers in anaerobic-sediment and a biomimetic system. *Environmental Science & Technology.* 42:1157–1164. 2008.

5. Add § 795.30 to subpart B to read as follows:

§ 795.30 Biodegradation in anaerobic digester sludge of decabromodiphenyl ether.

(a) *Source.* OCSPP Series 835—Fate, Transport and Transformation Test Guidelines, OCSPP Test Guideline 835.3280—Simulation Test to Assess the Primary and Ultimate Biodegradability of Chemicals Discharged to Wastewater (see the Mineralization and Transformation in Anaerobic Digester Sludge unit).

(b) *Introduction.* Anaerobic digesters are commonly used in municipal wastewater treatment plants to stabilize various plant sludges. The digestion process reduces the amount of solids present in the sludge, destroys pathogenic bacteria and viruses, and removes the biodegradable portion of the sludge. A test for biodegradation during anaerobic sludge digestion is particularly relevant for sorbing substances, which partition to primary and secondary sludge. This test is useful for determining the concentration of a substance present in the sludge leaving a treatment plant as well as demonstrating the potential for anaerobic biodegradation. The test is characterized by reducing conditions, a high level of anaerobic biomass, and a level of test substance based on expected wastewater concentrations and partitioning behavior. The test is designed to assess the extent to which a substance can be degraded during anaerobic digestion. This protocol describes the methods employed in determining the biodegradability of the test substance in anaerobic digester sludge.

(c) *Objectives.* The objective of the study is to assess the potential for mineralization and transformation of decabromodiphenyl ether (decaBDE) in anaerobic digester sludge, and the quantity and identity of degradants (if present).

(d) *Experimental design.* The test shall be conducted using digester sludge from six different sources. Untreated control and test substance-dosed systems shall be prepared for each sludge source. Additionally, an abiotic control shall be prepared. The test substance treatment systems shall be dosed at two concentrations with ^{14}C-labeled test substance or a combination of radiolabeled and nonlabeled forms of the test substance. A very low concentration is used to establish environmentally relevant transformation kinetics; whereas a higher concentration is required to quantify product formation. The test systems shall be incubated at approximately 35 °C for approximately 10 months; e.g., approximately 300 days. Studies using anaerobic digester sludge normally involve incubating sludge for 60 days, which is about twice the normal residence time of sludge in anaerobic digesters. The extended length of this study is based on a half-life of the test substance in sludge without added primers of 1,400 days as reported by Gerecke *et al.* at paragraphs (k)(1) and (k)(2) of this section, and the general recommendation that test duration be at least 20% of the anticipated half-life.

(1) Based on the length of the study, bench-scale anaerobic reactor systems with semi-continuous feeding shall be used. A system consists of a 5 liter (L) glass reactor containing an anaerobic digester sludge mixture incubated at 35 °C and gas collection bladder. On a weekly basis, supernatant shall be removed from the reactor and replaced with an anoxic mixture of settled activated sludge solids (secondary sludge) and fresh anaerobic digester sludge solids.

(2) Test substance-dosed systems shall be used for quantification of parent

material and degradation products. Untreated controls shall be used to determine background levels of the parent material and other polybrominated diphenyl ethers. Sampling shall be performed at time zero and seven times thereafter.

(e) *Materials and methods.* The test system and study conditions are selected to comply with OCSPP Test Guideline 835.3280 at paragraph (k)(3) of this section.

(1) *Test substance.* Information on the characterization of test, control or reference substances is required by Good Laboratory Practice Standards (GLPs) and principles. The sponsor is responsible for providing verification that the test substance has been characterized according to GLP requirements prior to its use in the study. If verification of GLP test substance characterization is not provided, it shall be noted in the compliance statement of the final report. The sponsor is responsible for all information related to the test substance. Following are descriptions of the radiolabeled form of the test substance: Name, lot number, specific activity, radiochemical purity, radiolabel position, identities and percentages of all brominated diphenylethers, sample form, solubility in water, and storage conditions. Following are descriptions of the nonlabeled form of the test substance: Name, lot number, purity, identities and percentages of all brominated diphenyl ethers, sample form, solubility in water, and storage conditions. The sponsor must agree to accept any unused test substance and/or test substance containers remaining at the end of the study.

(2) *Test substance preparation and administration.* A dispersal powder of test substance shall be prepared using an inert carrier (e.g., silica gel, quartz sand). A combination of radiolabeled and nonlabeled test substance shall be placed in a round bottom flask and dissolved with an appropriate solvent (i.e., tetrahydrofuran). The inert carrier shall be added to the flask and the solvent shall be evaporated using a rotary evaporator until the sediment is dry. This method of creating a dispersal powder is an appropriate route of administration for poorly water-soluble materials. Prior to the test, the adsorption characteristics of the test substance on various carriers shall be evaluated.

(3) *Test inoculum.* Anaerobic digester sludge shall be obtained from at least six different sites. Selection of the collection sites shall be the responsibility of the study Sponsor, with review and final approval by the EPA. All collection containers shall be purged with nitrogen and immediately sealed prior to use. In addition, purging the containers with nitrogen in the field after collection shall be performed if possible. Sludge shall be screened using a 2 millimeter (mm) mesh screen to remove debris and may be held for up to 7 days prior to the start of the test. The total solids level of the digester sludge shall be measured and should be in the range of 4–6% (40,000–60,000 (milligrams (mg)/L). On the day the test is to start, the inoculum shall be diluted with mineral salts solution to an initial solids level of approximately 25,000 mg/L. If the solids concentration is too low, the solids can be allowed to settle, the supernatant decanted, and the sludge resuspended in mineral salts solution. A final solids level and pH shall then be determined. All handling of anaerobic sludge after collection and prior to testing shall be performed under a constant flow of nitrogen or in an anaerobic glove box.

(4) *Mineral salts solution.* A mineral salts solution shall be prepared using high quality water. All chemicals used in the preparation of the solution shall be reagent grade or better, if available. The solution shall be autoclaved for 30 min and allowed to cool overnight in an anaerobic chamber or under an anaerobic atmosphere. The solution shall contain the following constituents per L of high quality water, as set forth in Table 1 of this paragraph:

TABLE 1—CONSTITUENTS OF HIGH QUALITY WATER

Chemical constituent	Gram/liter
Anhydrous potassium dihydrogen phosphate (KH_2PO_4)	0.27
Disodium hydrogen phosphate dodecahydrate ($Na_2HPO_4 \cdot 12H_2O$)	1.12
Ammonium chloride (NH_4Cl)	0.53
Calcium chloride dihydrate ($CaCl_2 \cdot 2H_2O$)	0.075
Magnesium chloride hexahydrate ($MgCl_2 \cdot 6H_2O$)	0.10
Iron (II) chloride tetrahydrate ($FeCl_2 \cdot 4H_2O$)	0.02

(5) *Digester sludge feed.* The source guideline for this study, OCSPP Test Guideline 835.3280, has no provision for feeding. However, due to the length of the study, periodic feeding is needed. The anaerobic digester sludge shall be fed an anoxic mixture of settled activated sludge solids (secondary sludge) and fresh anaerobic digester sludge solids. Activated sludge shall be collected from a sewage treatment plant receiving waste from predominantly domestic sources. The sludge shall be sieved using a 2 mm mesh screen to remove debris, then dewatered using filtration. A feed solution shall be prepared at a sludge solids concentration of approximately 50 gram (g)/L using mineral salts solution. The feed solution shall be stored under nitrogen and refrigerated. In addition, freshly prepared solutions should be stored for at least 1 week prior to use.

(6) *Test apparatus and conditions.* The test reactors shall be 5–L glass bottles and shall be identified by project number, test substance ID, test concentration, and unique identifier. The reactors shall be sealed with black rubber stoppers with stopcock ports and connections used for the addition of feed sludge, sample removal and gas collection bag. The test reactors shall be incubated at 35 ± 3 °C and in the dark. Reactor contents shall be mixed for at least 10 min. every day using a magnetic stirrer and test temperatures shall be measured each working day using a min/max thermometer.

(7) *Preparation of the test reactors.* Working under a constant flow of nitrogen, 1.5 L of anaerobic digester sludge (4–6% solids), mineral salts solution to achieve an initial solids level of approximately 25,000 mg/L, and test substance dispersal powder shall be combined in the reactor. The headspace in the reactor shall be purged with nitrogen, then the reactor sealed and transferred to the incubator.

(8) *Reactor maintenance.* The contents of the reactors (anaerobic sludge and mineral salts solution at a solids level of approx. 25,000 mg/L) shall be fed on a weekly basis. Prior to mixing, approximately 75 milliliter (mL) of supernatant shall be removed from the reactor and replaced with an equal volume of digester sludge feed solution.

The solids added in this way are expected to be approximately equivalent to 10% of the total digester solids reasonably expected to be present. The amount of digester sludge feed solution added may be adjusted based on the observed level of gas production. The activity of the supernatant removed shall be measured using liquid scintillation counting (LSC).

(9) *Abiotic control.* An abiotic control shall be included. Biological activity is inhibited in the abiotic control, which is used for estimating mineralization by difference, establishing extraction efficiency and recovery of the test substance, and quantifying other loss processes such as hydrolysis, oxidation, volatilization or sorption to test apparatus. The preparation of the abiotic system is typically performed using a combination of chemical and heat sterilization. A proven approach is to add mercuric chloride (1 g/L) to the sludge, which is then autoclaved for at least 90 min. Typically the volume of medium is less than or equal to half the volume of the container being autoclaved (e.g., 500 ml sludge in a 1–L container). After cooling, the pH of the abiotic system should be measured and adjusted to match that of the biologically active system. Alternative approaches to deactivate the system can also be used.

(10) *Sample collection schedule.* Proposed sampling times are day 0 and months 1, 2, 4, 6, 8, 9, and 10, but the actual sampling times shall be documented in the study records and in the final report. The timing of the sampling may be altered at the discretion of the Study Director, and more frequent sampling may be conducted. Based on the analytical method that is selected, the minimum change in the initial concentration of the test substance that can be detected shall be estimated, then applied to help determine the sampling schedule and assess the need for additional samples. As an example, if the minimum reliably detectable change is 5% relative to the starting concentration, and if this has already occurred at the first suggested sampling time (1 month), then measurements should be made monthly up to 10 months. The solids concentration of sludge shall be measured at each sampling interval.

(11) *Evolved gas and headspace analysis.* The evolved gas and headspace of the treated systems shall be analyzed for radiolabeled mineralization products ($^{14}CO_2$ and $^{14}CH_4$). At intervals throughout the study, evolved gases shall be analyzed by passing the contents of the gas collection bags through the mineralization apparatus described in this paragraph. Reactor headspace analysis shall be performed at the end of the study. The headspace gases within the reactor shall be continuously purged with a flow of nitrogen for a minimum of 2 hours and passed through a gas collection system consisting of two sets of carbon dioxide (CO_2) traps and a combustion apparatus. The displaced gases shall initially pass through one empty bottle followed by two bottles each containing approximately 100 mL of 1.5 normal (N) potassium hydroxide (KOH) (CO_2 trapping solution) followed by another empty bottle. The gas shall be combined with a flow of oxygen and channeled through a quartz column that is packed with cupric oxide and maintained at approximately 800 °C in a tube furnace to combust methane to CO_2. The gas exiting the combustion column shall be passed through an empty bottle followed by two additional CO_2 traps.

(12) *Sample processing and analysis for total radioactivity.* (i) Treated digester sludge samples shall be analyzed using a combination of LSC and combustion followed by LSC to determine the total amount of radioactivity associated with the sludge. At each sampling interval, replicate (minimum 3) one mL aliquots of well mixed digester sludge shall be placed into microcentrifuge tubes and centrifuged at 10,000 x g for 15 min. The activity associated with the supernatant shall be measured by LSC. Solids shall be analyzed using combustion followed by LSC to determine the total amount of radioactivity associated with the sludge solids.

(ii) Digester sludge shall be extracted following methods evaluated and verified prior to the start of the study. These methods shall be able to detect and quantify parent and degradates at least as well as those reported in the literature for polybrominated diphenyl ether (PBDE) analysis. The extraction method shall be robust, for example sequential extraction by solvent washing, soxhlet extraction and supercritical fluid extraction, but shall not substantially change the test substance or degradation products, or the structure of the matrix itself. Solvent extracts and extracted solids shall be analyzed to determine total radioactivity. Untreated controls shall be extracted in the same manner as the test substance-treated systems, but will not be analyzed for radioactivity.

(13) *Characterization of extracted radioactivity.* Digester sludge extracts from the treated systems shall be analyzed for radiolabeled test substance and degradation products using high performance liquid chromatography with radiochemical detection. Methods of analysis shall be verified prior to the start of the study.

(14) *Quantification of test substance and degradation products.* (i) Digester sludge extracts from the untreated control, abiotic control and treated systems shall be analyzed for quantification of BDE–209 (decaBDE) and trace level lower brominated diphenyl ethers (BDE) including but not limited to BDE–202 (octaBDE), BDE–197 (octaBDE), and BDE–201 (octaBDE), as well as brominated dibenzofurans. (ii) Methods for analysis shall be evaluated and verified prior to the start of the study and shall reference available best practice techniques for the type of analyte. This analysis shall be conducted using gas chromatography/electron capture negative chemical ionization mass spectrometry (GC/ECNI–MS). Expected limits of detection (LOD) and quantitation (LOQ) for reasonably anticipated products shall be determined and reported to EPA prior to starting the test.

(iii) All debromination products shall be measured in each sample, including background and time zero samples, and both biotic systems and abiotic (inhibited) controls.

(15) *Treatment of results.* Total mass balance of radioactivity shall be calculated at each sampling interval. Results shall be reported as a percentage of added radioactivity. Regression analysis of the percentage of test substance and major metabolites as a function of time shall be performed and the time for 50% degradation (D_T50) and the time for 90% degradation (D_T90) of the test substance and major metabolites shall be calculated, when appropriate. The ratio of BDE–197 (octaBDE) to BDE–201 (octaBDE) shall be determined, if present.

(f) *Records to be maintained.* Records to be maintained shall include, but are not limited to, the following:

(1) The original signed protocol and any amendments.

(2) Identification and characterization of the test substance as provided by sponsor.

(3) Experiment initiation and termination dates.

(4) Stock solution concentration calculations and solution preparation.

(5) Inoculum source and pretreatment data.

(6) Results of LSC and/or other (e.g., GC/ECNI–MS) analyses.

(7) Temperature data recorded during test period.

(8) Copy of final report.

(g) *Final report.* A final report of the results of the study shall be prepared by

the testing facility. The final report shall include, but is not limited to the following, when applicable:

(1) Name and address of facility performing the study.

(2) Dates on which the study was initiated and completed.

(3) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(4) Identification and characterization of the test substance as provided by Sponsor.

(5) A summary and analysis of the data and a statement of the conclusions drawn from the analysis.

(6) A description of the transformations and calculations performed on the data.

(7) A description of the methods used and reference to any standard method employed.

(8) A description of the test system.

(9) A description of the preparation of the test solutions, the testing concentrations, and the duration of the test.

(10) A description of sampling and analytical methods, including level of detection, level of quantification, and references.

(11) A description of the test results including measured values for individual PBDE congeners and polybrominated dioxin/furan (PBDF) homolog group.

(12) A description of all circumstances that may affect the quality or integrity of the data.

(13) The name of the study director, the names of other scientists or professionals, and the names of all supervisory personnel involved in the study.

(14) The signed and dated reports of each of the individual scientists or other professionals involved in the study, if applicable.

(15) The location where the raw data and final report are to be stored.

(16) A statement prepared by the Quality Assurance Unit listing the types of inspections, the dates that the study inspections were made and the findings reported to the Study Director and Management.

(17) A copy of all raw data including but not limited to chromatograms, lab notebooks, and data sheets etc.

(h) *Changes to the final report.* If it is necessary to make corrections or additions to the final report after it has been accepted, such changes shall be made in the form of an amendment issued by the Study Director. The amendment shall clearly identify the part of the study that is being amended and the reasons for the alteration. Amendments shall be signed and dated by the Study Director and Laboratory Quality Assurance Officer.

(i) *Changes to the protocol.* Planned changes to the protocol shall be in the form of written amendments signed by the Study Director and approved by the sponsor's representative and submitted to EPA using procedures in 40 CFR 790.50. Amendments shall be considered as part of the protocol and shall be attached to the final protocol. Any other changes shall be in the form of written deviations signed by the Study Director and filed with the raw data. All changes to the protocol shall be indicated in the final report. Changes to the test standard require prior approval from EPA using procedures in 40 CFR 790.55.

(j) *Good laboratory practices.* This study shall be conducted in accordance with GLPs for EPA and shall be consistent with the Organisation for Economic Co-operation and Development (OECD) Principles of Good Laboratory Practice. Each study conducted by the testing facility shall be routinely examined by the facility's Quality Assurance Unit for compliance with GLPs Standard Operating Procedures (SOP), and the specified protocol. A statement of compliance with GLPs shall be prepared for all portions of the study conducted by the testing facility. The sponsor is responsible for compliance with GLPs for procedures that may be performed by other laboratories (e.g., residue analyses). Raw data for all work performed at the testing facility and a copy of the final report shall be filed by project number in archives located on the facility's site or at an alternative location to be specified in the final report.

(k) *Literature cited in this section.*

(1) Gerecke, A.C.; Hartmann, P.C.; Heeb, N.V.; Kohler, H–P.E.; Giger, W.; Schmid, P.; Zennegg, M.; and Kohler, M. Anaerobic degradation of decabromodiphenyl ether. *Environmental Science & Technology.* 39:1078–1083. 2005.

(2) Gerecke, A.C.; Giger, W.; Hartmann, P.C.; Heeb, N.V.; Kohler, H–P.E.; Schmid, P.; Zennegg, M.; and Kohler, M. Anaerobic degradation of brominated flame retardants in sewage sludge. *Chemosphere.* 64:311–317. 2006.

(3) EPA. OCSPP Series 835—Fate, Transport and Transformation Test Guidelines. OCSPP Test Guideline 835.3280—Simulation Test to Assess Primary and Ultimate Biodegradability of Chemicals Discharged to Wastewater (see the Mineralization and Transformation in Anaerobic Digester Sludge unit). 2008.

6. Add § 795.65 to subpart B to read as follows:

§ 795.65 Photolytic degradation in the indoor environment of decabromodiphenyl ether.

(a) *Source.* EPA, based on a method in an article entitled ''Photodegradation of Decabromodiphenyl Ether in House Dust by Natural Sunlight'' by Stapleton and Dodder reported in *Environmental Toxicology and Chemistry.* 27:306–312. 2008.

(b) *Introduction.* Recent studies have found elevated levels of polybrominated diphenylethers (PBDEs) in indoor air and house dust, suggesting the presence of indoor sources. It has also been observed that photolytic degradation of BDE–209 (decabromodiphenyl ether (decaBDE)) can take place in house dust when exposed to sunlight, forming debrominated products. It is not well understood, however, how PBDEs are transferred from the sources to indoor media (e.g., house dust) and whether photolytic degradation can occur under indoor lighting conditions. Most Americans spend over 85% of their time indoors. Elderly and young children tend to stay indoors even longer. Therefore, understanding indoor exposure is a key to exposure assessment and risk reduction. This guideline describes test methods to characterize potential sources of these emerging contaminants in the indoor environment.

(c) *PBDE off-gassing and photolytic degradation*—(1) *Objectives.* The objectives of this first part of the investigation are to determine:

(i) If PBDEs can migrate out of plastics/fabrics by volatilization.

(ii) Determine if photolytic degradation can take place on the surfaces of plastics and fabrics and quantify these processes.

(2) *Experimental design.* Accelerated aging tests shall be conducted in an environmental chamber. PBDE off-gassing will be determined by taking integrated air samples and potential photolytic degradation by taking wipe samples on the surface of test specimens. The chamber system must meet the following criteria:

(i) It has uniform ultraviolet A (UV–A) light irradiation sources.

(ii) The light intensity is no less than 5 Watts per square meter (W/m^2) incident to the test specimen.

(iii) The chamber has a constant air flow to allow air sampling.

(iv) The moisture content in the air flow is no less than 10 gram/meter cubed (g/m^3) (i.e., 50% relative humidity at 23 °C).

(v) The light source shall be operated according to ASTM G 151–09, Standard

Practice for Exposing Nonmetallic Materials in Accelerated Test Devices that Use Laboratory Light Sources.

(vi) Window-filtered sunlight shall be simulated according to ASTM D 4459–06, Standard Practice for Xenon-Arc Exposure of Plastics Intended for Indoor Applications. ASTM D 4459–06 is intended to simulate the effects produced by exposure to solar irradiation through glass. A chamber system conforming to ASTM D 4459–06 can provide spectral irradiance of approximately 0.3 W/m²/nanometer (nm) at 340 nm (i.e., peak emission) when operated in the continuous light-on mode without water spray. This light source satisfies the light intensity requirement of 5 W/m² as specified in paragraph (c)(2)(ii) of this section.

(3) *Materials and methods*—(i) *Test specimens.* (A) The test specimens shall include BDE–209-containing high impact polystyrene (HIPS) coupons and commercial fabric swatches. HIPS coupons shall be prepared using typical commercial extrusion and injection molding conditions for the manufacture of HIPS television cabinet backs. High purity (99% or greater) BDE–209 shall be used in making the coupons. The high purity will assist in detection of any lower brominated diphenyl ethers (BDEs) formed as degradants. The coupons shall be manufactured using high impact polystyrene resin, BDE–209 (12% by weight (wt)), antimony oxide (4% by wt), and the typical additives of television cabinet backs (UV inhibitors, antioxidants, colorants, etc.). A total of 36 coupons shall be prepared for tests listed in Table 1 of paragraph (c)(3)(ii) of this section. Each coupon shall have an area of at least 100 centimeter squared (cm²) (one-side).

(B) Fabric swatches shall be obtained from a commercial source, depending on availability, or manufactured using 99+% BDE–209 as the flame retardant. A total of 36 swatches shall be prepared for tests listed in Table 1 of paragraph (c)(3)(ii) in this section. Each swatch shall have an area of at least 100 cm² (one-side).

(ii) *Test matrix.* A total of six tests listed in Table 1 of this paragraph shall be conducted.

TABLE 1—TEST MATRIX FOR POLYBROMINATED DIPHENYLETHER (PBDE) OFF-GASSING AND PHOTOLYTIC DEGRADATION

Test No.	Material	Ultraviolet (UV) light	Durations (hours)
1	High Impact Polystyrene (HIPS) coupons	on	300, 600, 900
2	HIPS coupons	on	300, 600, 900
3	HIPS coupons	off	300, 600, 900
4	Fabric swatches	on	300, 600, 900
5	Fabric swatches	on	300, 600, 900
6	Fabric swatches	off	300, 600, 900

(iii) *Test procedure.* (A) Prepare 12 identical coupons (or swatches) for an aging test.

(B) Put aside 3 coupons (or swatches) for taking wipe samples. These wipe samples represent no-exposure conditions. To take a wipe sample of fabric, use the California roller method per Ross, *et al.* (1991) in paragraph (j)(5) of this section.

(C) Clean the chamber by wiping the interior surfaces with ethanol-soaked paper towel.

(D) Take two wipe samples for chamber walls (100 cm² area each).

(E) Place three passive air samplers (PUF disks) on supporting cradle about half chamber height and away from inlet air.

(F) Place the remaining 9 coupons (or swatches) on chamber floor or rack, depending on the type of chamber used.

(G) Close chamber door and, for light-on tests, turn on the UV light, and start the test.

(H) At 300 elapsed hours, turn off the UV light and then open the chamber door.

(I) Remove three coupons (or swatches) from the chamber for taking wipe samples.

(J) Remove one PUF disk for determination of time-integrated air concentrations of BDE–209, lower PBDE congeners, and polybrominated dibenzofurans (PBDFs).

(K) Close chamber door and turn on the UV light.

(L) At 600 elapsed hours, turn off the UV light and then open the chamber door.

(M) Remove three coupons (or swatches) from the chamber for taking wipe samples.

(N) Remove one PUF disk for determination of time-integrated air concentrations of BDE–209, lower PBDE congeners, and PBDFs.

(O) Close chamber door and turn on the UV light.

(P) At 900 elapsed hours, turn off the UV light and then open the chamber door.

(Q) Remove the last three coupons (or swatches) from the chamber for taking wipe samples.

(R) Remove one PUF disk for determination of time-integrated air concentrations of BDE–209, lower PBDE congeners, and PBDFs.

(S) Take two wipe samples for chamber walls (100 cm² area each).

(iv) *Sampling and analytical methods*—(A) *Surface sampling for HIPS coupons.* ASTM D 6661–10, Standard Practice for Field Collection of Organic Compounds from Surfaces Using Wipe Sampling, or an equivalent method, shall be used for surface sampling on HIPS coupons. The wipe samples shall be extracted (Stapleton *et al.* (2008) in paragraph (j)(6) of this section) and then analyzed for BDE–209, lower PBDE congeners, and PBDFs.

(B) *Surface sampling for fabric swatches.* A modified ASTM D 6661–10 method, as described in this paragraph, shall be used for surface sampling on fabric swatches. Modified procedure: Use 10 × 10 cm² heavy filter paper instead of cotton gauze pad; place the fabric swatch on pre-cleaned flat surface; place the solvent-wetted filter paper on the fabric swatch; place a 10 × 10 cm² stainless steel (or aluminum) plate on the paper filter; add additional weights on the plate such that the total weight is 2 pounds (lb); wait for 5 minutes; remove plate and weights; extract the paper filter.

(C) *Air sampling.* Time-integrated air samples shall be collected by using passive air samplers (PUF disks; see Harrad, et al, 2006 (in paragraph (j)(4) of this section) and references therein).

(D) *Analytical method.* High sensitivity is a key factor in selecting the analytical method. A method based on chromatography/mass spectrometry in electron capture negative ionization mode (GC/MS–ECNI) shall be used. The analytes shall include BDEs and PBDFs as listed in Bezares-Cruz *et al.* 2004 in paragraph (j)(2) of this section; Stapleton and Dodder 2008 in paragraph (j)(7) of this section; and Geller *et al.* 2006 in paragraph (j)(3) of this section.

(d) *Accelerated aging tests for HIPS coupons and fabric swatches with house dust*—(1) *Objectives.* The objectives of this, second part of the investigation are to determine:

(i) If PBDEs or PBDF can migrate from plastics/fabrics to settled house dust by direct partitioning.

(ii) If the particle-bound PBDEs are subject to photolytic degradation and quantify these processes.

(2) *Experimental design.* (i) HIPS coupons and used TV cabinets shall be subjected to accelerated aging in a test chamber in the presence of standard house dust, National Institute of Standards Technology, Standard Reference Material 2583 (NIST SRM 2583), free of BDE–209. The requirements for the test chamber are the same as described in paragraph (c)(2) of this section, unless indicated otherwise. This investigation shall be performed as described in paragraph (c) of this section with the exception of the addition of pre-cleaned house dust to the surface of the HIPS coupons and fabric swatches. Accelerated aging under simulated sunlight and fluorescent lighting, exposure durations, and sample collections shall be identical to those described in paragraph (c) of this section, with the addition of collection and analysis of the added house dust. This experiment requires that the coupons are sufficiently large (500 cm^2 or larger) that there is enough house dust for sampling while the dust layer is not too thick.

(ii) The house dust can be deposited on test specimens by using a separate dust deposition chamber or spiked manually on test specimens (Ashley *et al.,* 2007 in paragraph (j)(1) of this section). The test samples and dust shall then be exposed to accelerated aging for 300, 600, and 900 hours, the dust collected by vacuum, and analyzed for content of BDE–209, lower BDEs, and PBDFs.

(3) *Materials and methods*—(i) *Test specimens.* (A) HIPS coupons and used TV cabinets shall be used in this investigation. The procedure for preparing HIPS coupons described in paragraph (c)(3)(i)(A) of this section shall be followed except that the size of the coupon shall be at least 500 cm^2, such that an adequate amount of house dust can be spiked on the surface without forming a thick layer of dust. The target dust load is between 0.5 and 1 milligram (mg)/cm^2 coupon.

(B) Two used TV sets shall be vacuumed and the dust analyzed for PBDEs and PBDFs with the methods described by Takigami, *et al.* (2008) in paragraph (j)(9) of this section. Samples of the backcover shall be analyzed by Fourier transform infrared spectroscopy (FT–IR) to identify the plastic and the flame retardant. Ground samples shall be prepared for determination of PBDE and PBDF content.

(ii) *Test matrix.* A total of seven tests listed in Table 2 of this paragraph shall be conducted.

TABLE 2—TEST MATRIX FOR PBDE MIGRATION FROM SOURCE TO HOUSE DUST AND PHOTOLYTIC DEGRADATION

Test No.	Material	Ultraviolet (UV) light	Durations (hours)
1	High impact polystyrene (HIPS) coupons	Off	300, 600, 900
2	HIPS coupons	Off	300, 600, 900
3	HIPS coupons	On	300, 600, 900
4	TV cabinet 1a	Off	600
5	TV cabinet 1b	On	600
6	TV cabinet 2a	Off	600
7	TV cabinet 2b	On	600

(iii) *Test procedure for HIPS coupons.* (A) Prepare HIPS coupons.

(B) Determine PBDE content in test specimens by preparing and analyzing ground samples.

(C) Evenly spike approximately 0.25 to 0.5 gram (g) NIST standard house dust, SRM 2583, on each of the six HIPS coupons. This can be done either manually (Ashley *et al.* 2007 in paragraph (j)(1) of this section) or in a particle deposition chamber. The targeted dust load is between 0.5 and 1 mg/cm^2 coupon.

(D) Clean the test chamber by wiping the interior surfaces with ethanol-soaked paper towel.

(E) Take two wipe samples from chamber walls (100 cm^2 area each); the PBDE and PBDF content shall be below the method detection limit.

(F) Open the chamber door, place six coupons on chamber floor (or rack), and close the door.

(G) Set the chamber temperature at 55 °C and air change rate between 0.3 to 0.5 air changes per hour, or the lowest air change flow the chamber system allows.

(H) Close chamber door and start the test.

(I) At 300 elapsed hours, remove 2 coupons for dust sampling, restart chamber.

(J) Repeat the above step at 600 and 900 elapsed hours.

(iv) *Test procedure for used TV cabinets.* (A) Open the TV set and collect settled dust from the interior surfaces (see Takigami *et al.* (2008) in paragraph (j)(9) of this section).

(B) Determine the PBDE and PBDF content in the settled dust.

(C) Clean the backcover by soft cloth and air jet; do not clean it with solvents.

(D) Determine PBDE and PBDF content in test specimen by preparing and analyzing ground samples.

(E) Divide the backcover evenly into two pieces (designated a and b in Table 2 of paragraph (d)(3)(ii) of this section), one for test with light and the other without light.

(F) For each half, cut flat areas into rectangular panels for testing; the total area of the flat panels shall be no less than 1,000 cm^2.

(G) Evenly spike NIST standard house dust, SRM 2583, on the interior side of the backcover panels for a targeted dust load between 0.5 to 1 mg/cm^2.

(H) Clean the test chamber by wiping the interior surfaces with ethanol-soaked paper towel.

(I) Take two wipe samples from chamber walls (100 cm^2 area each); the PBDE and PBDF content shall be below the method detection limit.

(J) Open the chamber door, place the half backcover with NIST standard house dust, SRM 2583, on chamber floor (or rack).

(K) Set the chamber temperature at 55 °C and air change rate between 0.3 to 0.5 air changes per hour, or the lowest air change flow the chamber system allows.

(L) Close chamber door and start test.

(M) At 600 elapsed hours, remove the backcover panels from chamber, collect and extract dust samples.

(v) *Sampling and analytical methods.* Dust samples shall be collected by micro-vacuuming (Ashley *et al.* (2007) in paragraph (j)(1) of this section or ASTM D 7144–05a (2011)). The method described by Stapleton and Dodder

(2008) in paragraph (j)(7) of this section shall be used to determine the PBDE content in dust samples. Wipe and air sampling methods are described in paragraph (c)(3)(iv) of this section.

(e) *Records to be maintained.* Records to be submitted to EPA shall include, but are not limited to, the following:

(1) The original signed protocol and any amendments.

(2) Identification and characterization of the test substance as provided by Sponsor.

(3) Experiment initiation and termination dates.

(4) Stock solution concentration calculations and solution preparation, if applicable.

(5) Results of liquid scintillation counter (LSC) and high performance liquid chromatography (HPLC) and/or other analysis (e.g., gas chromatography (GC) or GC/ECNI–MS).

(6) Data on temperature, air flow and inlet air moisture content.

(7) Copy of final report.

(f) *Final report.* A final report of the results of the study shall be prepared and submitted to EPA. The final report shall include, but is not limited to the following, when applicable:

(1) Name and address of facility performing the study.

(2) Dates on which the study was initiated and completed.

(3) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(4) Identification and characterization of the test substance as provided by sponsor.

(5) A summary and analysis of the data and a statement of the conclusions drawn from the analysis.

(6) A description of the transformations and calculations performed on the data.

(7) A description of the methods used and reference to any standard method employed.

(8) A description of the test system and test chamber(s), including chamber type, dimensions and light source; and spectral irradiance inside the chamber if applicable.

(9) A description of the preparation of the test solutions, the testing concentrations, and the duration of the test.

(10) A description of sampling and analytical methods, including level of detection, level of quantification, and references.

(11) A description of test specimens and test matrix.

(12) A description of the test results including measured values for individual PBDE congeners and PBDF homolog group for each matrix, exposure condition, and exposure duration.

(13) A description of all circumstances that may affect the quality or integrity of the data.

(14) The name of the study director, the names of other scientists or professionals, and the names of all supervisory personnel involved in the study.

(15) The signed and dated reports of each of the individual scientists or other professionals involved in the study, if applicable.

(16) The location where the raw data and final report are to be stored.

(17) A statement prepared by the Quality Assurance Unit listing the types of inspections, the dates that the study inspections were made and the findings reported to the Study Director and Management.

(18) A copy of all raw data including but not limited to chromatograms, lab notebooks and data sheets, etc.

(g) *Changes to the final report.* If it is necessary to make corrections or additions to the final report after it has been accepted, such changes shall be made in the form of an amendment issued by the Study Director. The amendment shall clearly identify the part of the study that is being amended and the reasons for the alteration. Amendments shall be signed and dated by the Study Director and Laboratory Quality Assurance Officer.

(h) *Changes to the protocol.* Planned changes to the protocol shall be in the form of written amendments signed by the Study Director and approved by the sponsor's representative and submitted to EPA using procedures in 40 CFR 790.50. Amendments shall be considered as part of the protocol and shall be attached to the final protocol. Any other changes shall be in the form of written deviations signed by the Study Director and filed with the raw data. All changes to the protocol shall be indicated in the final report. Changes to the test standard require prior approval from EPA using procedures in 40 CFR 790.55.

(i) *Good laboratory practices.* This study shall be conducted in accordance with Good Laboratory Practice Standards (GLPs) for EPA and shall be consistent with Organisation for Economic Co-operation and Development (OECD) Principles of Good Laboratory Practice. Each study conducted by the testing facility shall be routinely examined by the facility's quality assurance unit for compliance with GLPs, Standard Operating Procedures (SOP), and the specified protocol. A statement of compliance with GLPs shall be prepared for all portions of the study conducted by the testing facility. The sponsor is responsible for compliance with GLPs for procedures that may be performed by other laboratories (e.g., residue analyses). Raw data for all work performed at the testing facility and a copy of the final report shall be filed by project number in archives located on the facility's site or at an alternative location to be specified in the final report.

(j) *Literature cited in this section.*

(1) Ashley, K.; Applegate, G.T.; Wise, T.J.; Fernback, J.E.; and Goldcamp, M.J. Evaluation of a standardized micro-vacuum sampling method for collection of surface dust. *Journal of Occupational and Environmental Hygiene.* 4:215–223. 2007.

(2) Bezares-Cruz, J.; Jafvert, C.T.; and Hua, I. Solar photodecomposition of decabromodiphenyl ether: products and quantum yield. *Environmental Science & Technology.* 38:4149–4156. 2004.

(3) Geller, A.M.; Krüger, H.U.; Palm, W.U.; and Zetsch, C. Identification of polybrominated dibenzofurans from photolysis of decabromodiphenyl ether by UV spectroscopy. Abstract from *DIOXIN 2006,* Oslo, Norway. August 21–24, 2006.

(4) Harrad, S.; Hazrati, S.; and Ibarra, C. Concentrations of polychlorinated biphenyls in indoor air and polybrominated diphenyl ethers in indoor air and dust in Birmingham, United Kingdom: implications for human exposure. *Environmental Science & Technology.* 40:4633–4638. 2006.

(5) Ross, J.; Fong, H.; Thongsinthusak, T.; Margetich, S.; and Krieger, R. Measuring potential dermal transfer of surface pesticide residue generated from indoor fogger use: using the CDFA roller method interim report II. *Chemosphere.* 22:975–984. 1991.

(6) Stapleton, H.M.; Kelly, S.M.; Allen, J.G.; McClean, M.D.; and Webster, T.F. Measurement of polybrominated diphenyl ethers on hand wipes: estimating exposure from hand-to-mouth contact. *Environmental Science & Technology.* 42:3329–3334. 2008.

(7) Stapleton, H.M. and Dodder, N.G. Photodegradation of decabromodiphenyl ether in house dust by natural sunlight. *Environmental Toxicology and Chemistry.* 27:306–312. 2008.

(8) Strandberg, B.; Dodder, N.G.; Basu, I.; and Hites, R.A. Concentrations and spatial variations of polybrominated diphenyl ethers and other organohalogen compounds in Great Lakes air. *Environmental Science & Technology.* 35:1078–1083. 2001.

(9) Takigami, H.; Suzuki, G.; Hirai, Y.; and Sakai, S. Transfer of brominated flame retardants from components into dust inside television cabinets. *Chemosphere.* 73:161–169. 2008.

PART 799—[AMENDED]

7. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

8. Add § 799.5350 to subpart D to read as follows:

§ 799.5350 Certain polybrominated diphenylethers.

(a) *What mixtures will be tested under this section?* The chemical mixtures that must be tested under this section are three representative commercial forms of pentabromodiphenyl ether (pentaBDE), octabromodiphenyl ether (octaBDE), and decabromodiphenyl ether (decaBDE). The test sponsor(s) must identify the percentage of each of the seven polybrominated diphenylether (PBDE) congeners present in each of the representative commercial mixtures that will be tested.

(1) Commercial pentabromodiphenyl ether (c-pentaBDE), whose predominant components are tetrabromodiphenyl ether (tetraBDE) (CASRN 40088–47–9; benzene, 1,1′-oxybis-, tetrabromo deriv.), pentaBDE (CASRN 32534–81–9; benzene, 1,1′-oxybis-, pentabromo deriv.), and hexabromodiphenyl ether (hexaBDE) (CASRN 36483–60–0; benzene, 1,1′-oxybis-, hexabromo deriv.),

(2) Commercial octabromodiphenyl ether (c-octaBDE), whose predominant components are heptabromodiphenyl ether (heptaBDE) (CASRN 68928–80–3; benzene, 1,1′-oxybis-, heptabromo deriv.), octaBDE (CAS No. 32536–52–0; benzene, 1,1′-oxybis-, octabromo deriv.), and nonabromodiphenyl ether (CASRN 63936–56–1; benzene, pentabromo (tetrabromophenoxy)-).

(3) Commercial decabromodiphenyl ether (c-decaBDE), whose component with the highest percent composition is decaBDE (CASRN 1163–19–5; benzene, 1,1′-oxybis [2,3,4,5,6-pentabromo-), aka BDE–209.

(b) *Am I subject to this section?* (1) If you manufacture (including import) or process c-pentaBDE, c-octaBDE, or c-decaBDE for any use including in articles at any time after December 31, 2013, until the end of the test data reimbursement period as defined in 40 CFR 791.3(h), you are subject to this section with respect to that mixture. You are also subject to this section if you manufacture (including import) or process c-pentaBDE, c-octaBDE, or c-decaBDE for export from the United States. For this section, importers of articles containing c-pentaBDE, c-octaBDE, or c-decaBDE are considered manufacturers and are subject to this section.

(2) If you do not know or cannot reasonably ascertain that you manufacture or process a mixture listed in paragraph (a) of this section during the time period described in paragraph (b)(1) of this section (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you are not subject to this section with respect to that mixture.

(c) *If I am subject to this section, when must I comply with it?* (1)(i) Persons subject to this section are divided into two groups, as set forth in Table 1 of this paragraph: Tier 1 (persons initially required to comply) and Tier 2 (persons not initially required to comply). If you are subject to this section, you must determine if you fall within Tier 1 or Tier 2, based on Table 1 of this paragraph.

TABLE 1—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Tier 1 (persons initially required to comply)	Tier 2 (persons not initially required to comply)
Persons who manufacture (as defined at TSCA section 3(7)), or intend to manufacture, a test rule mixture and who are not listed under Tier 2. Importers of articles containing PBDEs are considered manufacturers.	A. Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a test rule mixture solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring chemical substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kg (1,100 pounds (lb)) annually (as described at 40 CFR 790.42(a)(4)); or —In small quantities solely for research and development (R and D) (as described at 40 CFR 790.42(a)(5)). B. Persons who process (as defined at TSCA section 3(10)) or intend to process a test rule mixture, including in articles (see 40 CFR 790.42(a)(2)).

(ii) Table 1 of paragraph (c)(1)(i) of this section expands the list of persons in Tier 2, that is those persons specified in 40 CFR 790.42(a)(2), (a)(4), and (a)(5), who, while legally subject to this section, must comply with the requirements of this section only if directed to do so by EPA under the circumstances set forth in paragraphs (c)(4), (c)(5), (c)(6), (c)(7), and (c)(10) of this section.

(2) If you are in Tier 1 with respect to a mixture listed in paragraph (a) of this section, you must, for each test required under this section for that mixture, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after the effective date in paragraph (k) of this section.

(3) If you are in Tier 2 with respect to a mixture listed in paragraph (a) of this section, you are considered to have an automatic conditional exemption and you will be required to comply with this section with regard to that mixture only if directed to do so by EPA under paragraphs (c)(5), (c)(7), or (c)(10) of this section.

(4) If no person in Tier 1 has notified EPA of its intent to conduct one or more

of the tests required by this section on any mixture listed in paragraph (a) of this section within 30 days after the effective date in paragraph (k) of this section, EPA will publish a **Federal Register** document that would specify the test(s) and the mixture(s) for which no letter of intent has been submitted and notify manufacturers in Tier 2A of their obligation to submit a letter of intent to test or to apply for an exemption from testing.

(5) If you are in Tier 2A (as specified in Table 1 in paragraph (c) of this section) with respect to a chemical substance listed in paragraph (a) of this section, and if you manufacture, or intend to manufacture, this chemical substance after the effective date in paragraph (k) of this section, or within 30 days after publication of the **Federal Register** document described in paragraph (c)(4) of this section, you must, for each test specified for that chemical substance in the document described in paragraph (c)(4) of this section, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after publication of the **Federal Register** document described in paragraph (c)(4) of this section.

(6) If no manufacturer in Tier 1 or Tier 2A has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in paragraph (a) of this section within 30 days after the publication of the **Federal Register** document described in paragraph (c)(4) of this section, EPA will publish another **Federal Register** document that would specify the test(s) and the chemical substance(s) for which no letter of intent has been submitted, and notify processors in Tier 2B of their obligation to submit a letter of intent to test or to apply for an exemption from testing.

(7) If you are in Tier 2B (as specified in Table 1 in paragraph (c) of this section) with respect to a mixture listed in paragraph (a) of this section, and if you process, or intend to process, this mixture after the effective date in paragraph (k) of this section, or within 30 days after publication of the **Federal Register** document described in paragraph (c)(6) of this section, you must, for each test specified for that mixture in the **Federal Register** document described in paragraph (c)(6) of this section, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after publication of the **Federal Register** document described in paragraph (c)(6) of this section.

(8) If no manufacturer or processor has notified EPA of its intent to conduct one or more of the tests required by this section for any of the mixtures listed in paragraph (a) of this section within 30 days after the publication of the **Federal Register** document described in paragraph (c)(6) of this section, EPA will notify all manufacturers and processors of those mixtures of this fact by certified letter or by publishing a **Federal Register** document specifying the test(s) for which no letter of intent has been submitted. This letter or **Federal Register** document will additionally notify all manufacturers and processors that all exemption applications concerning the test(s) have been denied, and will give the manufacturers and processors of the mixture(s) an opportunity to take corrective action.

(9) If no manufacturer or processor has notified EPA of its intent to conduct one or more of the tests required by this section for any of the mixtures listed in paragraph (a) of this section within 30 days after receipt of the certified letter or publication of the **Federal Register** document described in paragraph (c)(8) of this section, all manufacturers and processors subject to this section with respect to that mixture who are not already in violation of this section will be in violation of this section.

(10) If a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data with respect to a mixture listed in paragraph (a) of this section, under the procedures in 40 CFR 790.93 and 790.97, EPA may initiate termination proceedings for all testing exemptions with respect to that mixture and may notify persons in Tier 1 and Tier 2 that they are required to submit letters of intent to test or exemption applications within a specified period of time.

(11) If you are required to comply with this section, but your manufacture or processing of, or intent to manufacture or process, a mixture listed in paragraph (a) of this section begins after the applicable compliance date referred to in paragraphs (c)(2), (c)(5), or (c)(7) of this section, you must either submit a letter of intent to test or apply to EPA for an exemption. The letter of intent to test or the exemption application must be received by EPA no later than the day you begin manufacture or processing.

(d) *What must I do to comply with this section?* (1) To comply with this section you must either submit to EPA a letter of intent to test, or apply to and obtain from EPA an exemption from testing.

(2) For each test with respect to which you submit to EPA a letter of intent to test, you must conduct the testing specified in paragraphs (h) and (i) of this section and submit the test data to EPA.

(3) You must also comply with the procedures governing test rule requirements in 40 CFR part 790, as modified by this section, including the submission of letters of intent to test or exemption applications, the submission of study plans prior to testing, the conduct of testing, and the submission of data; 40 CFR part 792—Good Laboratory Practice Standards; and this section. The following provisions of 40 CFR part 790 do not apply to this section: Paragraphs (a), (d), (e), and (f) of § 790.45; § 790.48; paragraph (a)(2) and paragraph (b) of § 790.80; paragraph (e)(1) of § 790.82; and § 790.85.

(e) *If I do not comply with this section, when will I be considered in violation of it?* You will be considered in violation of this section as of 1 day after the date by which you are required to comply with this section.

(f) *How are EPA's data reimbursement procedures affected for purposes of this section?* If persons subject to this section are unable to agree on the amount or method of reimbursement for test data development for one or more mixtures included in this section, any person may request a hearing as described in 40 CFR part 791. In the determination of fair reimbursement shares under this section, if the hearing officer chooses to use a formula based on production volume, the total production volume amount will include amounts of a mixture manufactured and processed as impurities and amounts imported in articles.

(g) *Who must comply with the export notification requirements?* Any person who exports, or intends to export, a mixture listed in paragraph (a) of this section is subject to 40 CFR part 707, subpart D, except when the mixture is in articles.

(h) *How must I conduct my testing of c-pentaBDE and c-octaBDE?* The tests that are required for c-pentaBDE and c-octaBDE and the test methods that must be followed are listed in paragraphs (h)(1) through (11) of this section. All tests must be conducted in accordance with the requirements described in 40 CFR part 792—Good Laboratory Practice Standards.

(1) Toxicity to freshwater invertebrates of sediment-associated contaminants conducted in accordance

with ASTM E 1706–05e1 and following the guidance of ASTM E 1391–03.

(2) Laboratory soil toxicity and bioaccumulation tests with the lumbricid earthworm *Eisenia fetida* and the enchytraeid potworm *Enchytraeus albidu* conducted in accordance with ASTM E 1676–04 and following general guidance in ASTM E 1391–03.

(3) Toxicity to polychaetous annilids of sediment-associated contaminants conducted in accordance with ASTM E 1611–00 and following the guidance of ASTM E 1391–03.

(4) Laboratory soil toxicity to nematode *Caenorhabditis elegans* conducted in accordance with ASTM E 2172–01 and following guidance for collecting laboratory soil in ASTM E 1676–04, and following general guidance in ASTM E 1391–03.

(5) Toxicity to estuarine and marine invertebrates of sediment-associated contaminants conducted in accordance with ASTM E 1367–03 and following the guidance of ASTM E 1391–03.

(6) Prenatal developmental toxicity in rabbits conducted in accordance with 40 CFR 799.9370.

(7) 2-Generation reproductive toxicity with a satellite group for body burden determinations conducted in accordance with 40 CFR 799.9380.

(8) Immunotoxicity conducted in accordance with 40 CFR 799.9780.

(9) Neurotoxicity screening battery, acute and subchronic, conducted in accordance with 40 CFR 799.9620.

(10) Developmental neurotoxicity conducted in accordance with 40 CFR 799.9630.

(11) Chronic toxicity/carcinogenicity conducted in accordance with 40 CFR 799.9430.

(i) *How must I conduct my testing of c-decaBDE?* The tests that are required for c-decaBDE and the test methods that must be followed are listed in paragraphs (i)(1) through (4) of this section. The use of the term ''test substance'' in the guidelines listed in paragraphs (i)(2) through (4) of this section, should be understood to mean c-decaBDE or test mixture where appropriate. All tests must be conducted in accordance with the requirements described in 40 CFR part 792—Good Laboratory Practice Standards.

(1) The tests and test methods listed in paragraphs (h)(1) through (10) of this section.

(2) Anaerobic aquatic metabolism conducted in accordance with 40 CFR 795.25.

(3) Biodegradation in anaerobic digester sludge conducted in accordance with 40 CFR 795.30.

(4) Photolytic degradation of decaBDE in the indoor environment in accordance with 40 CFR 795.65.

(j) *Reporting requirements.* For c-pentaBDE and c-octaBDE or c-decaBDE a final report for each specific test for each subject mixture must be received by EPA by the number of months designated for that test in this paragraph after December 31, 2013, unless an extension is granted in writing pursuant to 40 CFR 790.55. A robust summary of the final report for each specific test shall be submitted electronically in addition to and at the same time as the final report. The term ''robust summary'' is used to describe the technical information necessary to adequately describe an experiment or study and includes the objectives, methods, results, and conclusions of the full study report which can be either an experiment or in some cases an estimation or prediction method. Guidance for the compilation of robust summaries is described in a document entitled ''Draft Guidance on Developing Robust Summaries'' which is available online at: *http://www.epa.gov/chemrtk/pubs/general/robsumgd.htm.*

(1) The final report on toxicity to freshwater invertebrates of sediment-associated contaminants shall be received by EPA by (12 months after the effective date in paragraph (k) of this section).

(2) The final report on laboratory soil toxicity and bioaccumulation tests with the lumbricid earthworm *Eisenia fetida* and the enchytraeid potworm *Enchytraeus albidu* shall be received by EPA by (12 months after the effective date in paragraph (k) of this section).

(3) The final report on toxicity to polychaetous annilids of sediment-associated contaminants shall be received by EPA by (12 months after the effective date in paragraph (k) of this section).

(4) The final report on toxicity to nematode *Caenorhabditis elegans* of sediment-associated contaminants shall be received by EPA by (12 months after the effective date in paragraph (k) of this section).

(5) The final report on toxicity to estuarine and marine invertebrates of sediment-associated contaminants shall be received by EPA by (12 months after the effective date in paragraph (k) of this section).

(6) The final report on prenatal developmental toxicity in rabbits shall be received by EPA by (12 months after the effective date in paragraph (k) of this section).

(7) The final report on 2-generation reproductive toxicity with a satellite group for body burden shall be received by EPA by (29 months after the effective date in paragraph (k) of this section).

(8) The final report on immunotoxicity shall be received by EPA by (12 months after the effective date in paragraph (k) of this section).

(9) The final report on the neurotoxicity screening battery, acute and subchronic, shall be received by EPA by (21 months after the effective date in paragraph (k) of this section).

(10) The final report on developmental neurotoxicity shall be received by EPA by (21 months after the effective date in paragraph (k) of this section).

(11) The final report for the chronic toxicity/carcinogenicity test shall be received by EPA by (60 months after the effective date in paragraph (k) of this section).

(12) The final report for anaerobic aquatic metabolism shall be received by EPA by (60 months after the effective date in paragraph (k) of this section).

(13) The final report for biodegradation in anaerobic digester sludge shall be received by EPA by (24 months after the effective date in paragraph (k) of this section).

(14) The final report for photolytic degradation of c-decaBDE in the indoor environment shall be received by EPA by (24 months after the effective date in paragraph (k) of this section).

(k) *Effective date.* This section is effective after December 31, 2013, for manufacturers (including importers) and processors of c-pentaBDE, c-octaBDE, and c-decaBDE for any use, including in articles.

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Part VI

Department of Homeland Security

8 CFR Parts 103 and 212

Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103 and 212

[CIS No. 2519–2011; DHS Docket No. USCIS–2012–0003]

RIN 1615–AB99

Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives

AGENCY: Department of Homeland Security, U.S. Citizenship and Immigration Services.

ACTION: Proposed rule.

SUMMARY: On January 9, 2012, U.S. Citizenship and Immigration Services (USCIS) announced its intention to change its current process for filing and adjudication of certain applications for waivers of inadmissibility filed in connection with an immediate relative immigrant visa application. USCIS now proposes to amend its regulations to allow certain immediate relatives of U.S. citizens who are physically present in the United States to request provisional unlawful presence waivers under the Immigration and Nationality Act of 1952, as amended (INA or Act), prior to departing from the United States for consular processing of their immigrant visa applications. Currently, such aliens must depart from the United States and request waivers of inadmissibility during the overseas immigrant visa process, often causing U.S. citizens to be separated for extended periods from their immediate relatives who are otherwise eligible for an immigrant visa and admission for lawful permanent residence. Under the proposal, USCIS would grant a provisional unlawful presence waiver that would become fully effective upon the alien's departure from the United States and the U.S. Department of State (DOS) consular officer's determination at the time of the immigrant visa interview that, in light of the approved provisional unlawful presence waiver and other evidence of record, the alien is otherwise admissible to the United States and eligible to receive an immigrant visa. USCIS does not envision issuing Notices to Appear (NTA) to initiate removal proceedings against aliens whose provisional waiver applications have been approved. However, if USCIS, for example, discovers acts, omissions, or post-approval activity that would meet the criteria for NTA issuance or determines that the provisional waiver was granted in error, USCIS may issue an NTA, consistent with USCIS's NTA issuance policy, as well as reopen the provisional waiver approval and deny the waiver request. USCIS anticipates that the proposed changes will significantly reduce the length of time U.S. citizens are separated from their immediate relatives who are required to remain outside of the United States for immigrant visa processing and during adjudication of a waiver of inadmissibility for the unlawful presence. USCIS also believes that the proposed process, which reduces the degree of interchange between the DOS and USCIS, will create efficiencies for both the U.S. Government and most applicants. In addition to codifying the new process, USCIS proposes amendments clarifying other regulations.

Even after USCIS begins accepting provisional unlawful presence waiver applications, the filing or approval of a provisional unlawful presence waiver application will *not:* confer any legal status, protect against the accrual of additional unlawful presence, authorize an alien to enter the United States without securing a visa or other appropriate entry document, convey any interim benefits (e.g., employment authorization, parole, or advance parole), or protect an alien from being placed in removal proceedings or removed from the United States.

Do not send an application requesting a provisional waiver under the procedures under consideration in this proposed rule. Any provisional waiver application filed before the rule becomes final and effective will be rejected and the application package returned to the applicant, including any fees. USCIS will begin accepting provisional waiver applications only after a final rule is issued and the procedural change becomes effective.

DATES: Written comments should be submitted on or before June 1, 2012.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2012–0003, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* You may submit comments directly to USCIS by email at *uscisfrcomment@dhs.gov.* Include DHS Docket No. USCIS–2012–0003 in the subject line of the message.
- *Mail:* Sunday Aigbe, Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. To ensure proper handling, please reference DHS Docket No. USCIS–2012–0003 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Sunday Aigbe, Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Contact Telephone Number is (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Roselyn Brown-Frei, Office of Policy and Strategy, Residence and Naturalization Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2099, Telephone (202) 272–1470 (this is not a toll free number).

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  D. Executive Order 13132: This proposed rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of

Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 Civil Justice Reform

F. Paperwork Reduction Act

G. Regulatory Flexibility Act

SUPPLEMENTARY INFORMATION:

I. Public Participation

All interested parties are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments that will provide the most assistance to DHS in developing these procedures will reference a specific portion of this rule, explain the reason for any recommended change, and include data, information, or authority that supports the recommended change.

Instructions: All submissions must include the agency name and DHS Docket No. USCIS–2012–0003. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

II. Executive Summary

A. Purpose of the Regulatory Action

1. Need for the Regulatory Action

Currently, certain spouses, children and parents of U.S. citizens (''immediate relatives'') who are in the United States are not eligible to apply for lawful permanent resident status (LPR) without leaving the United States because they entered the country unlawfully. These immediate relatives must travel abroad to obtain an immigrant visa from the Department of State (DOS) and, in many cases, also must request from the Department of Homeland Security (DHS) a waiver of the inadmissibility that resulted from their unlawful presence while they remain outside of the United States, separated from their U.S. citizen spouses, parents, or children. In some cases, waiver application processing can take well over a year, and the prolonged separation from immediate relatives can cause many U.S. citizens to experience extreme humanitarian and financial hardships. In addition, the action required for these immediate relatives to obtain LPR status in the United States—departure from the United States to apply for an immigrant visa at a DOS consulate abroad—is the very action that triggers the unlawful presence inadmissibility grounds under INA section 212(a)(9)(B)(i). As a result, many immediate relatives who may qualify for an immigrant visa are reluctant to proceed abroad to seek an immigrant visa.

2. Proposed Provisional Unlawful Waiver Process

DHS proposes to change its current process for the filing and adjudication of certain waivers of inadmissibility for qualifying immediate relatives of U.S. citizens, who are physically present in the United States, but must proceed abroad to obtain their immigrant visas. DHS proposes to allow qualifying immediate relatives to apply for a provisional waiver of their inadmissibility for unlawful presence while they are still in the United States and before they leave to attend their immigrant visa interview abroad.

Approving an application for a provisional unlawful presence waiver prior to the immediate relative's immigrant visa interview will allow the DOS consular officer to issue the immigrant visa without delay if there are no other grounds of inadmissibility and if the immediate relative otherwise is eligible to be issued an immigrant visa. The immediate relative would not have to wait abroad during the period when USCIS adjudicates his or her waiver request, but rather could remain in the United States with his or her U.S. citizen spouse or parent during that period. As a result, U.S. citizens' separation from their immediate relatives would be significantly reduced. In addition, given the greater certainty that will result from this process, U.S. citizens and their family members would also be able to better plan for the immediate relative's departure and eventual return to the United States.

3. Legal Authority

The Secretary of Homeland Security's authority for this proposed procedural change can be found in the Homeland Security Act of 2002, Public Law 107–296, section 102, 116 Stat. 2135, 6 U.S.C. 112, and section 103 of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1103, which give the Secretary the authority to administer and enforce the immigration and nationality laws. The Secretary's discretionary authority to waive the ground of inadmissibility for unlawful presence can be found in INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v). The regulation governing certain inadmissibility waivers is 8 CFR 212.7, and the fee schedule for waiver requests is found at 8 CFR 103.7.

B. Summary of the Major Provisions of the Regulatory Action in Question

DHS proposes to allow certain immediate relatives to file provisional waiver applications before they depart from the United States for their immigrant visa interviews.

1. Eligibility for the Provisional Waiver

Individuals may request a provisional waiver if:

i. Their sole ground of inadmissibility at the time of the immigrant visa interview with DOS would be unlawful presence for more than 180 days;

ii. They are the beneficiary of an approved Form I–130, Petition for Alien Relative or Form I–360, Petition for Amerasian, Widow(er), and Special Immigrant (classifying them as immediate relatives), and seek an immigrant visa from DOS based on this approved petition;

iii. They are physically present in the United States when they file the application for the provisional unlawful presence waiver;

iv. They appear for biometrics capture in the United States;

v. They establish that a U.S. citizen spouse or parent would experience extreme hardship if the individual is denied admission to the United States as an LPR;

vi. They warrant a favorable exercise of discretion; and

vii. They are 17 years or older at the time of filing an application for a provisional unlawful presence waiver.

2. Ineligibility for the Provisional Unlawful Presence Waiver

Individuals are ineligible for a provisional waiver if:

i. They are outside the United States;

ii. They do not have an approved Form I–130 or Form I–360 petition, classifying them as an immediate relative;

iii. They have not paid the immigrant visa processing fee to DOS and are not actively pursuing the immigrant visa process based on the approved petition;

iv. They have already been scheduled for an immigrant visa interview;

v. They are under the age of 17 years when the provisional unlawful presence waiver is filed;

vi. They are in removal proceedings that have not been terminated or dismissed;

vii. They have not had the charging document (Notice to Appear) to initiate removal proceedings cancelled;

viii. They are in removal proceedings that have been administratively closed but not subsequently reopened for the issuance of a final voluntary departure order;

ix. They are subject to a final order of removal;

x. They have a pending application for adjustment of status to that of an LPR in the United States;

xi. USCIS has reason to believe they would be subject to one or more other grounds of inadmissibility;

xii. They fail to establish extreme hardship or do not merit a favorable exercise of discretion; or

xiii. They previously filed a provisional unlawful presence waiver application.

3. Adjudication and Decision

USCIS would adjudicate the provisional unlawful presence waiver application and issue requests for evidence. USCIS would not issue Notices of Intent to Deny (NOIDs). If USCIS approves the provisional waiver application, USCIS would notify the applicant and DOS of the approval. Denials cannot be appealed and aliens will not have the right to seek motions to reopen or reconsider USCIS's decision. Aliens whose provisional waiver requests are denied, however, may still apply for a waiver through the current I–601 waiver process. USCIS also reserves the authority to reopen and reconsider on its own motion an approval or a denial of a provisional waiver application at any time.

4. Effect of Waiver

An approved provisional waiver would not become effective until the alien departs from the United States, appears for his or her immigrant visa interview and is found admissible and otherwise eligible for the immigrant visa by DOS. The provisional waiver would then become a permanent waiver, waiving the inadmissibility based on the period of unlawful presence noted in the waiver request.

5. Revocation

An approved provisional waiver is automatically revoked if DOS denies the immigrant visa application or if the underlying immigrant visa petition approval is revoked, withdrawn, or otherwise rendered invalid. An approved waiver also is revoked if the alien is inadmissible on grounds other than for unlawful presence under INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i), if the alien is otherwise ineligible for an immigrant visa, or if DOS terminates the alien's immigrant visa registration under INA section 203(g), 8 U.S.C. 1153(g).

C. Costs and Benefits

This proposed rule is expected to result in a reduction in the time that U.S. citizens are separated from their alien immediate relatives, thus reducing the financial and emotional hardship for these families. In addition, the Federal Government would achieve increased efficiencies in processing immigrant visas for individuals subject to the inadmissibility bar.

DHS estimates the discounted total ten-year cost of this rule would range from approximately $100.6 million to approximately $303.8 million at a seven percent discount rate. Compared with the current waiver process, this rule proposes that the provisional waiver applicants submit biometric information. Included in this cost estimate is the cost of collecting biometrics, which we estimate will range from approximately $28 million to approximately $42.5 million at seven percent over ten years. In addition, as this rule significantly streamlines the current process, DHS expects that additional applicants will apply for the provisional unlawful presence waiver compared to the current waiver process. To the extent that this rule induces new demand for immediate relative visas, additional forms such as the Form I–130, Petition for Alien Relative, will be filed compared to the pre-rule baseline. These additional forms will involve fees being paid by applicants to the Federal Government for form processing and additional opportunity costs of time being incurred by applicants to provide the information required by the forms. The cost estimate for this rule also includes the impact of this induced demand, which we estimate will range from approximately $72.6 million to approximately $261.3 million at seven percent over ten years.

Estimates for the costs of the proposed rule were developed assuming that current demand is constrained because of concerns that families may endure lengthy separations under the current system. Because of uncertainties as to the degree of the current constraint of demand, DHS used a range of constraint levels with corresponding increases in demand to estimate the costs. The costs for each increase in demand are summarized below.

Estimated increase in costs with an increase in demand of:				
	25%	50%	75%	90%
Cost of Biometrics Collection and Processing				
10 year Costs Undiscounted	$40,353,130	$48,423,756	$56,494,382	$61,336,758
Total 10 year Costs Discounted at 7%	27,967,676	33,561,211	39,154,746	42,510,867
Total 10 year Costs Discounted at 3%	34,221,714	41,066,057	47,910,400	52,017,006
Costs of Applications for the Additional (Induced) Demand for Immigrant Visas				
10 year Costs Undiscounted	$104,738,108	$209,476,215	$314,214,323	$377,057,188
Total 10 year Costs Discounted at 7%	72,591,182	145,182,365	217,773,547	261,328,257
Total 10 year Costs Discounted at 3%	88,823,781	177,647,563	266,471,344	319,765,613
Total Costs to New Applicants				
10 year Costs Undiscounted	$145,091,238	$257,899,971	$370,708,705	$438,393,945
Total 10 year Costs Discounted at 7%	100,558,858	178,743,575	256,928,293	303,839,123
Total 10 year Costs Discounted at 3%	123,045,496	218,713,620	314,381,745	371,782,619

III. Background

A. Legal Authority

The Homeland Security Act of 2002, Public Law 107–296, section 102, 116 Stat. 2135, 6 U.S.C. 112, and section 103 of the INA, 8 U.S.C. 1103, charge the Secretary of Homeland Security (Secretary) with administration and enforcement of the immigration and naturalization laws. The Secretary would effectuate these proposed changes under the broad authority to administer the Department of Homeland Security and the authorities provided

under the Homeland Security Act of 2002, the immigration and nationality laws, and other delegated authority.

B. Grounds of Inadmissibility

U.S. immigration laws provide mechanisms for U.S. citizens to bring their families into the United States for family reunification, including, in some cases, their immediate relatives who have previously violated the immigration laws. At the same time, however, the immigration laws prescribe acts, conditions, and conduct that bar aliens, including immediate relatives of U.S. citizens, from being admitted to the United States or obtaining an immigrant visa. Such acts, conditions, and conduct include certain criminal offenses, public health concerns, fraud and misrepresentation, failure to possess proper documents, accrual of more than 180 days of unlawful presence in the United States, and terrorism. The grounds of inadmissibility are set forth in section 212(a) of the INA, 8 U.S.C. 1182(a). The Secretary has the discretion to waive certain inadmissibility grounds, if the alien files a request and if he or she meets the relevant statutory and regulatory requirements and agency policy. If the Secretary grants the waiver, the waived ground will no longer bar the alien's admission, readmission, or immigrant visa eligibility.

C. Unlawful Presence

The inadmissibility grounds based on accrual of unlawful presence in the United States can be found in INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i). Under part (I) of this provision, an alien who was unlawfully present in the United States for more than 180 days but less than one year, and who then departs voluntarily from the United States before the commencement of removal proceedings, will be inadmissible for 3 years from the date of departure. Under part (II) of the same provision, an alien who was unlawfully present in the United States for one year or more and then departs the United States before, during, or after removal proceedings, will be inadmissible for 10 years from the date of the departure.

These 3-year and 10-year unlawful presence bars do not take effect unless and until an alien departs from the United States. *See, e.g., Matter of Rodarte-Roman,* 23 I. & N. Dec. 905 (BIA 2006). By statute, aliens are not considered to accrue unlawful presence for purposes of INA section 212(a)(9)(B)(i) if they fall into certain categories. For example, aliens do not accrue unlawful presence while they are under 18 years of age. *See* INA section 212(a)(9)(B)(iii)(I), 8 U.S.C. 1182(a)(9)(B)(iii)(I). Similarly, individuals with pending asylum claims generally are not considered to be accruing unlawful presence while their applications are pending. *See* INA section 212(a)(9)(B)(iii)(II), 8 U.S.C. 1182(a)(9)(B)(iii)(II). Battered women and children and victims of a severe form of trafficking in persons are not subject to the INA section 212(a)(9)(B)(i) ground of inadmissibility at all if they demonstrate that there was a substantial connection between their victimization and their unlawful presence. *See* INA section 212(a)(9)(B)(iii)(IV)–(V), 8 U.S.C. 1182(a)(9)(B)(iii)(IV)–(V).

The Secretary has the discretion to waive the 3-year and 10-year unlawful presence bars if the alien is seeking admission as an immigrant and if the alien demonstrates that the denial of his or her admission to the United States would cause ''extreme hardship'' to the alien's U.S. citizen or LPR spouse or parent. *See* INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v). Because the granting of a waiver is discretionary, the alien also must establish that he or she merits a favorable exercise of discretion. Aliens who are subject to the unlawful presence bars must apply for and be granted a waiver in order to receive an immigrant visa and be admitted to the United States.

D. Current Waiver Process

If a U.S. citizen wishes to sponsor an alien spouse, parent, or child (unmarried and under the age of 21)—known as ''immediate relatives'' in the immigration laws, *see* INA section 201(b)(2)(A)(i), 8 U.S.C. 1151(b)(2)(A)(i)—to immigrate to the United States as an LPR, he or she must first file a Petition for Alien Relative, Form I–130, with USCIS, with appropriate fees and in accordance with USCIS form instructions.[1] *See* INA section 204(a), 8 U.S.C. 1154(a); 8 CFR 204.1 and 8 CFR 204.2. USCIS determines if an alien qualifies for classification as an immediate relative of the U.S. citizen.[2] *Id.*

If USCIS approves the petition for the alien relative, many aliens are eligible to apply for adjustment of status to that of an LPR under INA section 245, 8 U.S.C. 1255, or other provisions of law. Through adjustment of status, the alien can obtain LPR status in the United States without having to depart. There are various reasons why an alien may be statutorily ineligible for adjustment of status. For example, the alien would be ineligible if he or she entered the United States without inspection and admission or parole. Also, there are some individuals who are eligible to adjust status in the United States but choose to proceed through consular processing abroad. An alien who is seeking LPR status based on an approved Form I–130 but who is ineligible for adjustment of status must obtain an immigrant visa from a consular officer abroad before the alien can return to the United States and be admitted as an immigrant.

If USCIS determines that the alien qualifies as an immediate relative of a U.S. citizen, and the alien will be pursuing consular processing of an immigrant visa application abroad, USCIS forwards the approved petition to the DOS National Visa Center (NVC). At the NVC, DOS begins to process the immigrant visa application and requests that the applicant submit the fee and the documents required for visa processing. Upon submission of all necessary documents by the alien, DOS schedules the alien for an immigrant visa interview with a DOS consular officer at a U.S. Embassy or consulate abroad. During the immigrant visa interview, the consular officer determines whether the alien is admissible to the United States and eligible for an immigrant visa. If the consular officer finds that the alien is subject to any ground of inadmissibility, including the 3-year or 10-year unlawful presence bars, the consular officer informs the alien that he or she may file an Application for Waiver of Grounds of Inadmissibility, Form I–601 (waiver application), with USCIS or, where USCIS is not present, with DOS, if a waiver is authorized for the relevant ground of inadmissibility. If the waiver application is filed with DOS, DOS forwards it to USCIS for adjudication.

[1] U.S. citizens also may sponsor unmarried sons and daughters (21 years of age and older) and married sons and daughters, and lawful permanent residents may sponsor spouses, children (unmarried and under the age of 21), and unmarried sons and daughters (21 years of age and older). *See* INA sections 203(a), 204(a), 8 U.S.C. 1153(a), 1154(a). Because these relatives would not be eligible for the provisional waiver process for the reasons described in this proposed rule, they are not included in this discussion.

[2] Certain immediate relatives (*i.e.,* widows/widowers of U.S. citizen and their minor unmarried children) can self-petition by filing a Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant. Additionally, if the U.S. citizen spouse is deceased after the Form I–130 has been filed, the I–130 converts automatically to an approved I–360 widow/widower petition if the I–130 was approved at the time of the U.S. citizen's death. If the I–130 was pending at the time of the U.S. citizen's death, the pending I–130 converts automatically to a pending I–360 widow/widower petition.

The alien must remain abroad while USCIS adjudicates the waiver application. Currently, USCIS adjudicates waiver applications filed abroad at various locations in other countries and within the United States, depending on where the alien applied for his or her immigrant visa. If USCIS approves the waiver, it notifies DOS, and DOS may issue the immigrant visa if DOS determines that the alien is otherwise eligible to receive an immigrant visa. If the waiver is denied, the alien is subject to the unlawful presence bars and must remain outside of the United States for 3 or 10 years before being able to reapply for an immigrant visa. The alien may file an appeal of a denied waiver application with the USCIS Administrative Appeals Office, or file another waiver application in the future.

The 3-year and 10-year unlawful presence bars do not apply unless and until the alien departs from the United States. As noted above, many aliens who would trigger these bars if they depart from the United States are, for other reasons, statutorily ineligible to apply for adjustment of status to that of an LPR while in the United States. Consequently, these aliens must depart the United States and apply for immigrant visas at a U.S. Embassy or consulate abroad before being able to return to the United States as immigrants. The action required to obtain lawful permanent residence in the United States, departure from the United States in order to apply for an immigrant visa at a consulate abroad, is the very action that triggers the INA section 212(a)(9)(B)(i) inadmissibility grounds.

E. Problems With the Current Inadmissibility Waiver Process

Under the current system, the entire waiver adjudication process occurs while the immediate relative remains outside of the United States, separated from his or her U.S. citizen spouse or parent. In some cases, the waiver processing time can take well over one year for reasons explained below. As a result, many immediate relatives are reluctant to proceed abroad to obtain an immigrant visa. In addition, the processing delays and extended absences of immediate relatives can cause many U.S. citizens and their families to experience extreme humanitarian and financial hardships. As such, an immediate relative's extended absence from the United States can give rise to the sort of extreme hardships to U.S. citizen family members that the unlawful presence waivers are intended to address and, if the waiver is merited, avoid.

The current waiver adjudication process also creates inefficiencies and costs for the Federal Government. Overseas adjudication processing times for waivers vary by location and the number of waiver requests pending at any given time. Processing times are affected by the resources, personnel, and space available at USCIS offices abroad and the U.S. Embassy or consulate in a particular location. It is expensive for USCIS to maintain staff outside the United States, and space in U.S. Embassies and consulates is limited. Waiver processing times also are affected by the need for USCIS and DOS to transfer cases between the two agencies when adjudicating the immigrant visa application and waiver request. These limitations often prolong the overall waiver adjudication process and contribute significantly to the time U.S. citizens and their family members are separated from their immediate relatives.

F. Notice of Intent

On January 9, 2012, USCIS published a notice of intent announcing its intent to change the current process for filing and adjudication of certain applications for waivers of inadmissibility filed in connection with an immediate relative immigrant visa application.[3] The notice explained the proposed process that USCIS was considering and that USCIS would further develop, and ultimately finalize, the proposal through the rulemaking process.

On January 10, 2012, USCIS conducted a stakeholder engagement to discuss the notice of intent. USCIS provided an overview of how the proposed process changes may affect filing and adjudication, and USCIS addressed questions from stakeholders. More than 900 people participated via telephone and in person. Topics covered included eligibility, procedures, and consequences of an approval or denial of a provisional waiver request.

IV. Proposed Changes

A. Overview of Proposed Provisional Unlawful Presence Waiver Process

DHS proposes to allow certain ''immediate relatives'' (spouse, parents, and children (unmarried and under the age of 21)) of U.S. citizens, as defined in INA section 201(b)(2)(A)(i), 8 U.S.C. 1151(b)(2)(A)(i), to apply for a waiver of inadmissibility of the unlawful presence bars before leaving the United States to attend their immigrant visa interviews abroad. Individuals filing under the new process would be subject to a biometrics collection requirement to assist in identifying other possible grounds of inadmissibility and ensure the integrity of the process. If USCIS has reason to believe that, at the time of the visa interview, the individual may be inadmissible on grounds of inadmissibility other than the unlawful presence grounds, USCIS would deny the application. If USCIS denies the provisional waiver application, USCIS will follow the NTA issuance policy in effect at the time of adjudication to determine if it will initiate removal proceedings against the applicant.[4]

If USCIS approves the provisional unlawful presence waiver, the approval would be provisional. It would become fully effective only upon the alien's departure from the United States and a determination by DOS that the alien is, in light of the approved provisional unlawful presence waiver, otherwise admissible and eligible for an immigrant visa.

If USCIS denies the provisional unlawful presence waiver, the alien may apply for a waiver of the 3- or 10-year unlawful presence bar through the current process described above, following the immigrant visa interview with a DOS consular officer. Given that USCIS is establishing these provisional waiver procedures purely as a matter of agency discretion, USCIS will not, in the interests of administrative efficiency and finality, allow for more than one provisional unlawful presence waiver filing. USCIS also will not permit administrative appeals or motions to reopen or reconsider the denial of a provisional unlawful presence waiver request. *See* proposed 8 CFR 212.7(e)(3) and (10). USCIS, however, proposes to retain its discretionary authority to reopen or reconsider a case on a USCIS motion when warranted. *See* 8 CFR 103.5(a)(5). USCIS is committed to issuing Requests for Evidence (RFE) in considering applications that it receives from unrepresented individuals or others if their applications are missing critical information needed to demonstrate extreme hardship. USCIS believes that RFEs will allow the applicant to address any deficiencies and to provide any additional information to establish eligibility for the provisional waiver. However,

[3] *See* 77 FR 1040 (Jan. 9, 2012).

[4] *See* USCIS Memorandum, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens (Nov. 7, 2011), available at: *http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/NTA%20PM%20(Approved%20as%20final%2011-7-11).pdf.*

allowing applicants to file multiple applications would significantly interfere with the interagency operations between USCIS and DOS and substantially delay immigrant visa processing.

B. Rationale for Proposed Change

The 3-year and 10-year unlawful presence bars do not apply unless the alien departs from the United States. Accordingly, aliens who have accrued more than 180 days of unlawful presence do not trigger the inadmissibility ground unless and until they depart. Many of these aliens are not eligible to adjust status to that of an LPR while remaining in the United States and must depart from the United States to apply for and obtain an immigrant visa at a U.S. Embassy or consulate abroad. Therefore, the action required from the alien in order to obtain LPR status—the departure to attend the immigrant visa interview—is the very action that triggers the 3-year or 10-year unlawful presence bar.

If DHS could approve an application for a provisional waiver of the unlawful presence bars prior to the alien's immigrant visa interview abroad, the consular officer could issue the immigrant visa without delay following the interview. The alien would not have to wait abroad while USCIS adjudicates the waiver request. Instead, the alien could remain in the United States with his or her U.S. citizen spouse or parent while USCIS adjudicates his or her provisional unlawful presence waiver request. U.S. citizens, aliens, and their family members also could better plan for the immediate relative's departure for the consular interview and eventual return to the United States. The concept of allowing applicants to apply for a waiver while still in the United States, in advance of their departure, is not new and has been implemented in other contexts. For example, certain aliens who previously were ordered removed or were removed from the United States must obtain the Secretary's consent to reapply for admission to the United States because they are inadmissible under INA section 212(a)(9)(A), 8 U.S.C. 1182(a)(9)(A). By law, consent to reapply must be obtained before the alien seeks to return to the United States. However, such aliens have been allowed to request consent to reapply in advance, while still in the United States before they depart and trigger inadmissibility under INA section 212(a)(9)(A). Thus, the proposed provisional unlawful waiver process is consistent with past practice with respect to certain pre-departure adjudications that address other grounds of inadmissibility under INA section 212(a)(9), 8 U.S.C. 1182(a)(9).

An approved provisional unlawful presence waiver would facilitate immigrant visa issuance shortly after the first consular interview. DHS believes that this process change would reduce the overall visa processing time, the period of separation of the U.S. citizen from his or her immediate relative, and the financial and emotional impact on the U.S. citizen and his or her family due to the immediate relative's absence from the United States. It also may encourage individuals to take affirmative steps to obtain an immigrant visa to become an LPR as reduced waiting times abroad would render it an efficient, more predictable process, rather than one with unpredictable and prolonged periods of separation.

For USCIS and DOS, the proposed changes would minimize the case transfers that are currently part of the waiver process and save both agencies time and resources. If USCIS could process and adjudicate the provisional unlawful presence waivers domestically, USCIS could move a large part of its workload to USCIS Service Centers or field offices in the United States with resources that are less expensive than overseas staffing resources and that are available and flexible enough to accommodate filing surges. By adjudicating the provisional unlawful presence waiver applications domestically, USCIS also may be able to better standardize its waiver processing times for all requests for waivers of inadmissibility that are filed by applicants who process their immigrant visas at a U.S. Embassy or consulate. Most waivers of inadmissibility filed overseas are filed by aliens who are subject to the unlawful presence bars only.

USCIS has identified immediate relatives of U.S. citizens to participate in this streamlined process, in part, because the focus on U.S. citizens and their immediate relatives is consistent with Congress' prioritization in the immigration laws of family reunification.[5] Congress did not set an annual limit on the number of immediate relatives who may be admitted to the United States each year; consequently, visas for these aliens can be processed without awaiting availability of an immigrant visa number.

USCIS proposes to limit the provisional unlawful presence waiver process to aliens who would be subject only to the unlawful presence bars at the time of visa issuance because of the unique nature of INA section 212(a)(9)(B), as described above, and because preliminary data collected from DHS systems shows that approximately 80% of the waiver applications filed overseas are filed by aliens solely inadmissible under the unlawful presence bars. Accordingly, this proposed rule would likely affect a large number of U.S. citizens and their families who could be reunited more quickly with their immediate relatives.

Finally, USCIS is further limiting eligibility for a provisional unlawful presence waiver only to immediate relatives of U.S. citizens who can establish that denial of the waiver would result in extreme hardship to their U.S. citizen spouse or parents, as provided in INA section 212(a)(9)(B)(v). DHS would not modify the extreme hardship standard.

USCIS is not extending this provisional unlawful presence waiver process to preference aliens. Preference aliens do not qualify as immediate relatives of U.S. citizens; they include unmarried sons and daughters of U.S. citizens (21 years of age or older); spouses, children, unmarried sons and daughters of LPRs; married sons and daughters of U.S. citizens; and siblings of U.S. citizens. Unlike immediate relatives, the preference categories have annual numerical limitations set by statute. The processing of visas for these aliens depends on the availability of an immigrant visa number, while immediate relatives always have visa availability.

Additionally, USCIS is not extending this provisional unlawful presence waiver process to immediate relatives who are basing their claim on extreme hardship to an LPR spouse or parent. For the provisional unlawful presence waiver, the qualifying relative must be a U.S. citizen. Preference aliens and immediate relatives whose qualifying relative for the extreme hardship claim is an LPR can still apply for a waiver under the current waiver process, after a consular interview abroad.

[5] Congress' emphasis on family reunification has long been reflected in immigration statutes. *See, e.g.,* S. Rep. No. 89–748, at 13 (1965) (Comm. Rep. for the Immigration Act of 1965, Pub. L. 89–236, 79 Stat. 911) (''Reunification of families is to be the foremost consideration. *The closer the family relationship the higher the preference.* In order that the family unit may be preserved as much as possible, parents of adult U.S. citizens, as well as spouses and children, may enter the United States without numerical limitation.'') (emphasis added); *see also* Statement by President George Bush Upon Signing S.358 (Immigration Act of 1990), 1990 U.S.C.C.A.N. 6801–1 (Nov. 29, 1990) (''The Act maintains our Nation's historic commitment to family reunification by increasing the number of immigrant visas allocated on the basis of family ties'').

This approach is consistent with the Secretary's authority to determine how best to administer the immigration laws and is within USCIS's discretion to determine the most efficient means for effectuating the waiver process. This new process is only a change in filing procedures (*i.e.,* where an alien can seek a waiver of inadmissibility); it is not a substantive change in how USCIS determines extreme hardship. Limiting eligibility for this alternative waiver process to immediate relatives of U.S. citizens who can establish extreme hardship to a U.S. citizen spouse or parent is consistent with Congress' policy choice of focusing on reunification of U.S. citizen families. Focusing on hardship to U.S. citizens in the development of this discretionary procedure also is consistent with permissible distinctions that may be drawn between U.S. citizens and aliens and between classes of aliens in immigration laws and policies, *see, e.g., Fiallo* v. *Bell,* 430 U.S. 787, 792 (1977); *Mathews* v. *Diaz,* 426 U.S. 67, 81 (1976), and with the governmental interest in encouraging naturalization, *see, e.g., City of Chicago* v. *Shalala,* 189 F.3d 598, 608 (7th Cir. 1999), and cases cited therein.[6]

DHS recognizes that certain immediate relatives of U.S. citizens may not be eligible to avail themselves of this alternative waiver process. Aliens who need a waiver of inadmissibility for unlawful presence based on extreme hardship to an LPR spouse or parent can still apply for such waivers after their consular interviews abroad.

C. Aliens Eligible To Seek a Provisional Unlawful Presence Waiver

USCIS proposes to limit the provisional unlawful presence waiver to aliens who meet the following criteria:

1. Alien Must Be the Beneficiary of an Approved Immediate Relative Petition

USCIS proposes to limit this proposed provisional unlawful presence waiver process to aliens who are ''immediate relatives'' under INA section 201(b)(2)(A)(i), 8 U.S.C. 1151(b)(2)(A)(i). *See* proposed 8 CFR 212.7(e)(2). Immediate relatives of U.S. citizens include spouses of U.S. citizens; unmarried children under the age of 21 of U.S. citizens; and parents of U.S. citizens over age 21. Certain surviving spouses and children of deceased U.S. citizens, self-petitioners, and aliens who would become conditional permanent residents based on a marriage to a U.S. citizen for less than two years are also considered immediate relatives. Such aliens are included in the category of eligible individuals who could seek a provisional unlawful presence waiver. *See* INA section 201(b)(2)(A)(i), 8 U.S.C. 1151(b)(2)(A)(i); INA section 204(l), 8 U.S.C. 1154(l); and INA section 216, 8 U.S.C. 1186.

USCIS has considered the possibility that the proposed process may lead to an increase in fraudulent family-based immigrant visa petitions. USCIS is committed to preventing and detecting fraud in its immigration benefits programs and to implementing existing preventive measures provided in the immigration laws.

Fraud detection and prevention are integral to USCIS's mission and to its standard operating procedures governing adjudications. USCIS's Fraud Detection and National Security division (FDNS) focuses entirely on fraud detection and national security. FDNS investigates fraud in the benefit process and makes appropriate referrals to U.S. Immigration and Customs Enforcement (ICE), the Department of Justice, or other law enforcement agencies when such fraud should be considered for criminal prosecution. USCIS also has established standard operating procedures in field offices for referrals to FDNS on potential fraud cases that may require additional review. For fraud prevention, FDNS conducts benefit fraud assessments to detect any patterns or increase in fraudulent practices in a particular application type or area of the United States.

Congress also provided in the immigration laws several measures aimed at preventing marriage fraud, focusing especially on potential for fraud in marriages of less than two years' duration. For instance, Congress mandated that aliens married less than two years are subject to conditional resident status for two years after admission as an immigrant. *See* INA section 216, 8 U.S.C. 1186a; 8 CFR part 216; 8 CFR 235.11. Once USCIS approves an immediate relative petition for an alien married to a U.S. citizen, and DOS determines that the alien is admissible and eligible for an immigrant visa, the alien can seek admission to the United States as an LPR. If, however, the alien has been married to the U.S. citizen for less than two years before the date of admission, the alien is admitted conditionally for a two-year period and, during that period, is considered a conditional resident.

As a general matter, the U.S. citizen petitioner and the conditional permanent resident must jointly seek to remove the condition within the 90-day period immediately preceding the second anniversary of the date the alien obtained conditional permanent residence status. *See id.* If the U.S. citizen petitioner and the conditional permanent resident fail to do so, the alien's conditional permanent resident status is terminated automatically, and any waiver granted in connection with the status is automatically void. *See id.; see also* 8 CFR 212.7 and 216.4(a)(6). Furthermore, if USCIS determines that the marriage was entered into to evade the immigration laws, USCIS cannot approve future petitions for that alien. *See* INA section 204(c), 8 U.S.C. 1154(c).

The administrative process for removal of conditions and the USCIS assessment of whether the marriage was entered into to evade the immigration laws provide strong tools for combating potential fraud. USCIS, therefore, is not proposing to exclude from the provisional unlawful presence waiver process aliens who have been married less than two years and will be admitted as conditional residents. However, in the case of marriages that would be subject to the conditional LPR provisions of INA section 216, USCIS reserves the right, in the exercise of discretion, to interview the alien and the U.S. citizen spouse (as provided in proposed 8 CFR 212.7(e)(7) of this proposed rule) in connection with the provisional waiver application, when USCIS determines that the facts in a particular case warrant additional inquiry and review.

2. Alien Must Be Present in the United States When Filing the Provisional Unlawful Presence Waiver Application and for the Biometrics Appointment

USCIS proposes to limit the category of immediate relatives eligible for the provisional unlawful presence waiver to aliens who are present in the United States but who are required to depart to immigrate through the DOS consular process abroad. *See* proposed 8 CFR 212.7(e)(2)(i). Eligible immediate relatives also must be present in the United States to provide biometrics at an USCIS Application Support Center (ASC). This new biometric requirement will help USCIS determine if the alien potentially is subject to other grounds of inadmissibility or does not merit a favorable exercise of discretion, and is consistent with the agency's security and public safety priorities. Aliens who are outside the United States may not seek a provisional unlawful presence

[6] The Department has not determined whether it might extend the availability of this procedure to other aliens. *See, Beach Commc'ns* v. *FCC,* 508 U.S. 307, 316 (1993) (observing that policymakers ''must be allowed leeway to approach a perceived problem incrementally'').

waiver but can proceed through the current waiver process.

3. Alien Must Seek a Visa Based on the Approved Immediate Relative Petition

USCIS proposes to require an alien seeking a provisional unlawful presence waiver to submit evidence demonstrating that he or she has initiated the immigrant visa process with the DOS NVC based upon the approved immediate relative petition, by submitting evidence that he or she has paid the immigrant visa processing fee required by DOS. Such evidence is required to ensure that the alien is pursuing consular processing, as the provisional unlawful presence waiver would be granted to facilitate the immigrant visa interview. The alien, however, is not eligible to apply under the proposed process if he or she has already been scheduled for an immigrant visa interview at a DOS Embassy or consulate abroad. *See* proposed 8 CFR 212.7(e)(2) and (3). USCIS analyzed whether cases already scheduled for visa interview should be included in the provisional unlawful presence waiver process. USCIS determined that resource constraints and timing issues warranted exclusion of these cases from participation. Therefore, any immigrant visa applicants who have already had their appointments scheduled, whether they actually appeared for the interview or not, should proceed with the immigrant visa process and not delay.

4. Alien Must Be Inadmissible Based Solely on Unlawful Presence at the Time of the Immigrant Visa Interview With DOS

USCIS proposes to further limit this provisional unlawful presence waiver process to immediate relatives whose only ground of inadmissibility is, or would be upon departure from the United States, the 3-year or 10-year unlawful presence bars under INA section 212(a)(9)(B)(i)(I) or (II), 8 U.S.C. 1182(a)(9)(B)(i)(I) or (II) at the time of the consular interview. *See* proposed 8 CFR 212.7(e)(2) and (e)(3)(i). USCIS proposes that if, when processing the provisional waiver application, USCIS has reason to believe that an alien may be inadmissible on a ground of inadmissibility other than unlawful presence under INA section 212(a)(9)(B)(i) at the time of the visa interview with DOS, USCIS will deny the provisional unlawful presence waiver application. Such a denial of a provisional unlawful presence waiver request would not be appealable; however, it would not preclude the alien from filing a waiver application under the current waiver process following the consular interview. *See* proposed 8 CFR 212.2(e)(7) and (e)(10).

Furthermore, USCIS's determination that it does not have reason to believe that the individual may be inadmissible on grounds other than the 3-year or 10-year unlawful presence bar at the time of the immigrant visa interview does not preclude DOS from making its own admissibility determination and its own finding that the individual may be ineligible for the immigrant visa despite the approved provisional unlawful presence waiver. Jurisdiction for making final ineligibility findings in relation to the consular immigrant visa process lies with DOS, not with USCIS. Similarly, neither USCIS's approval of the provisional unlawful presence waiver application nor DOS's visa eligibility determination and subsequent immigrant visa issuance guarantees that an alien will be admitted to the United States by U.S. Customs and Border Protection (CBP) if CBP determines that the individual is inadmissible on grounds other than those that were validly waived. *See* INA sections 204(e), 221(h); 8 U.S.C. 1154(e), 1201(h).

5. Alien Must Meet the Requirements for the Unlawful Presence Waiver

An alien must meet all statutory requirements for the unlawful presence waiver, as outlined in INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v), including the limitation that the alien must show extreme hardship to a U.S. citizen spouse or parent.[7] The alien also must establish that he or she warrants a favorable exercise of discretion.

Under current policy, USCIS considers the death of a U.S. citizen petitioner to be the functional equivalent of extreme hardship for purposes of a waiver sought by an applicant who is a surviving immediate relative of a deceased U.S. citizen and who meets the requirements of INA section 204(l), 8 U.S.C. 1154(l), if the extreme hardship being claimed by the surviving beneficiary would have been on account of extreme hardship to the U.S. citizen petitioner if he or she had survived. Note, however, that the finding of extreme hardship merely *permits,* and never *compels,* a favorable exercise of discretion.[8]

Any alien who can only qualify for a waiver based on extreme hardship to an LPR spouse or parent can still apply for a waiver under the existing process after an immigrant visa interview at a U.S. Embassy or consulate abroad.

6. Alien Must Be Age 17 or Older at the Time of Filing a Provisional Unlawful Presence Waiver

USCIS proposes to accept provisional unlawful presence waiver applications for immediate relatives 17 years of age and older but reject applications filed by those under the age of 17. Unlawful presence does not begin to accrue until an alien who is unlawfully present in the United States reaches the age of 18. Accepting waiver applications from an alien who is 17 years of age or older would prevent an alien's prolonged separation from his or her U.S. citizen relative in the event that the alien's immigrant visa interview is scheduled after his or her 18th birthday.

D. Aliens Ineligible for a Provisional Unlawful Presence Waiver

Under the proposed rule, immediate relatives of U.S. citizens would not be eligible for a provisional unlawful presence waiver under proposed 8 CFR 212.7(e) if:

i. They are outside the United States;

ii. They are not the beneficiaries of either an approved Petition for Alien Relative, Form I–130, classifying them as an immediate relative, or an approved Petition for Amerasian, Widow(er), and Special Immigrant, Form I–360, classifying them as an immediate relative;

iii. They are not actively pursuing consular processing of an immigrant visa based on the approved immediate relative petition and have not paid the immigrant visa processing fee to DOS;

iv. They have been scheduled for an immigrant visa interview at the time they submit an application for a provisional unlawful presence waiver;

v. They fail to comply with the biometric capture requirements;

vi. They are under the age of 17 years when the provisional unlawful presence waiver application is filed;

vii. They are in removal proceedings that have not been terminated or dismissed;

viii. They have not had the charging document (Notice to Appear) to initiate removal proceedings cancelled;

ix. They are in removal proceedings that have been administratively closed

[7] INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v), allows for consideration of extreme hardship to a U.S. citizen spouse or parent or to an LPR spouse or parent. As explained previously, USCIS is limiting eligibility for the provisional waiver to those who can show extreme hardship to a U.S. citizen spouse or parent.

[8] *See* USCIS Memorandum, *Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act* (Dec. 16, 2010), *available at http://www.uscis.gov/USCIS/Laws/Memoranda/2011/January/Death-of-Qualifying-Relative.pdf; see also Matter of Cervantes-Gonzalez,* 22 I. & N. Dec. 560, 565 (BIA 1999), *aff'd,* 244 F.3d 1001 (9th Cir. 2001).

but not subsequently reopened for the issuance of a final voluntary departure order;

x. They are subject to a final order of removal issued under section 235, 238 or 240 of the Act or any other provision of law (including an in absentia removal order under section 240(b)(5) of the Act);

xi. They have a pending application with USCIS for lawful permanent resident status in the United States;

xii. USCIS has reason to believe that the alien may be subject to other grounds of inadmissibility at the time of immigrant visa interview with DOS;

xiii. They have not established to USCIS's satisfaction that denial of the waiver would result in extreme hardship to the alien's U.S. citizen spouse or parent or that a favorable exercise of discretion is merited; or

xiv. The alien has previously filed a provisional unlawful presence waiver application.

While individuals with cases pending with the NVC who have paid the immigrant visa processing fee to DOS and not yet been scheduled for a consular visa interview would be eligible to apply for the provisional unlawful presence waiver, applicants who have had their immigrant visa interviews scheduled will not be allowed to participate in the provisional waiver process. The inclusion of these cases was analyzed but resource constraints and the close coordination with DOS on the timeframes for interview scheduling once the provisional waiver application has been filed, led to the decision to exclude the cases from participation. NVC and USCIS intend that both document collection for the immigrant visa interview and waiver adjudication should occur as parallel processes that will conclude at the same time, thus allowing NVC to schedule the immigrant visa interview and transfer the case to post with no additional delay. Therefore, any immigrant visa applicant who has already had his or her appointment scheduled, whether they actually appeared for the interview or not, should proceed with the immigrant visa process and not delay.

DHS is considering development of a process to permit filing of provisional unlawful presence waiver applications by certain individuals who: (a) Are in removal proceedings but have had such proceedings administratively closed and were subsequently granted voluntary departure, (b) were in removal proceedings that have been terminated or dismissed or (c) have had the charging document (Notice To Appear) to initiate removal proceedings cancelled.

Aliens who cannot participate in the proposed provisional unlawful presence waiver process may still pursue a waiver through the current waiver process.

E. Filing, Adjudication, and Decisions

1. Filing the Provisional Unlawful Presence Waiver Application

DHS proposes to require an alien seeking a provisional unlawful presence waiver to file an application on the form designated by USCIS, with the fees prescribed in proposed 8 CFR 103.7(b)(1) and (b)(1)(i)(C), and in accordance with the form instructions. *See* proposed 8 CFR 212.7(a)(1) and (e)(4). For this new process, USCIS has created and proposes to use a new Application for Provisional Unlawful Presence Waiver, Form I–601A. The filing fee for the Form I–601A will be the same as Form I–601, which is currently $585, since the adjudication time required for both forms is the same.[9] *See* proposed 8 CFR 103.7(b)(1)(i)(AA). USCIS will not accept fee waiver requests for the Form I–601A. The biometrics fee is currently $85 and also cannot be waived. *See* proposed 8 CFR 103.7(b)(1)(i)(C) and 8 CFR 103.17. The new Form I–601A will minimize the potential for confusion between the provisional waiver process and the current Form I–601 waiver process.

Additionally, applicants for a provisional unlawful presence waiver would be required to undergo biometrics collection to ensure the integrity of the process and assist USCIS in determining if the applicants have other potential grounds of inadmissibility. *See* proposed 8 CFR 212.7(e)(5). DHS would deny the provisional unlawful presence waiver application based on abandonment of the application if the applicant fails to provide biometrics or fails to appear at the biometrics appointment. *See* proposed 8 CFR 103.2(b)(13) and proposed 8 CFR 212.7(e)(5).

2. Adjudication of the Provisional Unlawful Presence Waiver Application

Once a provisional unlawful presence waiver application is properly filed, USCIS would adjudicate the provisional unlawful presence waiver. The alien still would have the burden to establish that he or she is eligible for the waiver and meets the requirements outlined in INA section 212(a)(9)(B)(v), with the additional limitation that the alien must establish extreme hardship only to his or her U.S. citizen spouse or parent. *See* proposed 8 CFR 212.7(e)(2) and 8 CFR 212.7(e)(7). The alien also would have to demonstrate that he or she warrants a favorable exercise of the Secretary's discretion. *See* INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v); proposed 8 CFR 212.7(e)(6). If the alien meets all eligibility requirements, and a favorable exercise of discretion is warranted, USCIS would approve the provisional unlawful presence waiver. *See* 8 CFR 212.7(e)(2).

3. Requests for Evidence

DHS proposes to issue RFEs in accordance with USCIS regulations at 8 CFR 103.2 and applicable USCIS policy. USCIS will not issue Notices of Intent to Deny (NOIDs) to provisional unlawful presence waiver applicants. DHS proposes to limit RFEs solely to the issues of whether the alien has established extreme hardship and/or merits a favorable exercise of discretion. USCIS is committed to issuing RFEs to address applications it receives that are missing critical information needed to demonstrate extreme hardship. USCIS also has determined that issuing NOIDS could significantly interfere with the operational agreements between USCIS and DOS and could substantially delay immigrant visa processing. If an alien fails to respond to an RFE within the stated time frame, USCIS may deny the provisional unlawful presence waiver application as abandoned. *See* 8 CFR 103.2(b)(13)(i).

4. Denials

USCIS would deny a provisional unlawful presence waiver application without issuing an RFE when the alien fails to meet any of the specified eligibility criteria described in proposed 8 CFR 212.7(e). An alien whose provisional unlawful presence waiver application is denied may seek a waiver after the DOS consular officer has made an admissibility determination at the immigrant visa interview at a U.S. Embassy or consulate abroad. *See* proposed 8 CFR 212.7(e)(10). An alien may not seek multiple provisional unlawful presence waivers. *See* proposed 8 CFR 212.7(e)(3).

[9] The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other applicants. INA section 286(m), 8 U.S.C. 1356(m). The INA provides that the fees may recover administrative costs as well. For further information about USCIS fees, see U.S. Citizenship and Immigration Services Fee Schedule, 75 FR 58962 (Sept. 24, 2010) and 75 FR 33445 (June 11, 2010).

5. Rejections of Provisional Unlawful Presence Waiver Applications

USCIS also proposes to codify the criteria for when an application will be rejected and fees returned to the applicant. The goal is to reduce the likelihood than an alien will erroneously file a waiver application and further delay his or her immigrant visa processing. USCIS would reject a request for a provisional unlawful presence waiver if the alien:

A. Fails to pay the required fees for the waiver application or biometrics collection or pay the correct fee;

B. Fails to sign the waiver application;

C. Fails to provide his or her family name, domestic home address, and date of birth;

D. Is under the age of 17 years.

E. Does not include evidence of an approved petition that classifies the alien as an immediate relative of a U.S. citizen;

F. Does not include a copy of the immigrant visa fee receipt evidencing that the alien has paid the immigrant visa processing fee to DOS;

G. Has indicated on the provisional unlawful presence waiver application that a visa interview has been scheduled with DOS; or

H. Has not indicated on the provisional unlawful presence waiver application that the qualifying relative is a U.S. citizen spouse or parent.

See proposed 8 CFR 212.7(e)(4)(ii). An alien whose application was rejected is not prohibited from filing a new provisional unlawful presence waiver application according to the procedures outlined in proposed 8 CFR 212.7(e).

6. Withdrawal of the Request for a Provisional Unlawful Presence Waiver

An alien may withdraw a provisional unlawful presence waiver application at any time prior to a final decision. Subsequent to the withdrawal, the case will be closed, and the alien and his or her representative (if applicable) will be notified. DOS/NVC also will be notified of the action. *See* proposed 8 CFR 212.7(e)(8) and (9). An alien who withdraws an application for a provisional unlawful presence waiver will not be permitted to later file a new application, and the filing fees will not be refunded.

F. Motions To Reopen or Reconsider or Appeals of Denied Provisional Unlawful Presence Waiver Applications

Aliens seeking a provisional unlawful presence waiver would not be able to file a motion to reopen or motion to reconsider or to appeal a denial of a request for a provisional waiver. *See* proposed 8 CFR 212.7(e)(10). Rather, such aliens could apply for a waiver through the current consular immigrant visa process. *See id.*

USCIS proposes to retain its authority and discretion to reopen or reconsider a decision on its own motion. *See* proposed 8 CFR 212.7(a)(4)(v) and 8 CFR 212.7(e)(12). For the provisional unlawful presence waiver process, USCIS may reopen the decision and deny or approve the provisional unlawful presence waiver at any time if USCIS finds that the decision was issued in error or approval is no longer warranted. USCIS would follow the requirements of 8 CFR 103.5(a)(5) before reopening a case and denying a waiver application. A USCIS decision to deny a provisional unlawful presence waiver is not subject to administrative appeal. USCIS's decision is discretionary and is not a final agency action subject to judicial review, since USCIS's decision is without prejudice to the alien's ability to seek a waiver from USCIS through the consular immigrant visa process. *See* proposed 8 CFR 212.7(a)(3) and (e)(8) and (e)(10).

G. Terms and Conditions of the Provisional Unlawful Presence Waiver

DHS proposes that a provisional unlawful presence waiver will not become a final waiver unless and until the alien departs from the United States, he or she presents himself or herself for the immigrant visa interview at a U.S. Embassy or consulate abroad, and the DOS consular officer determines that, in light of the approval of the provisional waiver and other evidence of record, the alien is otherwise admissible to the United States and eligible for an immigrant visa. *See* proposed 8 CFR 212.7(e)(11). Once DOS determines that the alien is eligible for an immigrant visa, the provisional unlawful presence waiver will become final and fully effective, subject to 8 CFR 212.7(a)(4). *See* proposed 8 CFR 212.7(a)(4) and 8 CFR 212.7(e)(11) and (e)(12).

A provisional unlawful presence waiver would only be effective for immigrant visa issuance based on the approved immediate relative petition. If the consular officer determines that the alien is inadmissible on other grounds, the provisional unlawful presence waiver is automatically revoked and the alien would be required to file a new waiver application that covers all applicable grounds of inadmissibility, including the 3-year or 10-year unlawful presence bar. *See* proposed 8 CFR 212.7(e)(13).

DHS also proposes to limit the grant of a provisional unlawful presence waiver to the time period of the immigrant visa registration of an alien in accordance with INA section 203(g), 8 U.S.C. 1153(g).[10] DOS may terminate an alien's immigrant visa registration if the alien fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa. DOS, however, may reinstate the alien's immigrant visa registration if the alien establishes that within two years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond his or her control. *See* INA section 203(g), 8 U.S.C. 1153(g); 22 CFR 42.83. Thus, the grant of the provisional unlawful presence waiver is valid as long as the alien's immigrant visa registration has not been terminated by DOS pursuant to INA 203(g) and the underlying immigrant visa petition has not been revoked, withdrawn, or otherwise terminated.

Furthermore, the validity of the provisional unlawful presence waiver also is dependent on the continued validity of the approved immediate relative petition. *See* proposed 8 CFR 212.7(a)(4), (e)(11), (e)(12) and (e)(13). If the approval of the visa petition or self-petition is revoked for any reason, the provisional waiver would be automatically revoked, unless it is otherwise reinstated for humanitarian reasons or converted to a widow/widower petition. Under proposed 8 CFR 212.7(a)(4) and 8 CFR (e)(13), the provisional unlawful presence waiver also would be revoked automatically when: An immigrant visa ineligibility cannot be overcome; the approved immigrant visa application is withdrawn, or otherwise rendered invalid at any time; or when DOS terminates the registration of the immigrant visa application pursuant to INA section 203(g), 8 U.S.C. 1153(g), and DOS has not reinstated the registration in accordance with section 203(g), 8 U.S.C. 1153(g). Termination of registration under INA section 203(g), 8 U.S.C. 1153(g), also automatically revokes the approval of the underlying immediate relative petition under 8 CFR 205.1(a)(1).

Finally, a provisional unlawful presence waiver grant is revoked automatically if the alien, at any time,

[10] INA section 203(g) provides in relevant part: ''The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien's control.'' *See also* 22 CFR 42.83 (implementing INA section 203(g)).

reenters or attempts to reenter the United States without admission or parole. *See* proposed 8 CFR 212.7(e)(13).

H. Validity of the Provisional Unlawful Presence Waiver

Once the provisional waiver takes full effect in accordance with this rule, the alien would no longer be inadmissible to the United States under INA section 212(a)(9)(B) based on previously-accrued unlawful presence. The alien's period of unlawful presence in the United States upon which the waiver is based would be permanently waived, other than for conditional permanent residents whose status is terminated and certain K nonimmigrants, as described below. *See* proposed 8 CFR 212.7(a)(4) and (e)(12). The consular officer could issue the immigrant visa since the alien is no longer inadmissible.

I. Limitations of a Provisional Unlawful Presence Waiver

The application for, or grant of, a provisional unlawful presence waiver under this proposed rule does not create a lawful immigration status or extend any authorized period of stay to the alien while the provisional waiver application is pending review with USCIS or while the alien is waiting for his or her immigrant visa interview. If an alien is present in the United States without lawful immigration status, he or she remains subject to removal, as provided by law. *See* INA section 240, 8 U.S.C. 1229a. A pending or approved application for a provisional unlawful presence waiver also will not toll the accrual of unlawful presence, but a grant of the provisional unlawful presence waiver will cover inadmissibility under both the 3-year and the 10-year bars under INA section 212(a)(9)(B)(i). A pending or approved application for a provisional unlawful presence waiver will not protect the alien from any other grounds of inadmissibility that he or she may be subject to in the future, such as the bar for unlawful reentry after previous immigration violation in the United States, under INA section 212(a)(9)(C), 8 U.S.C. 1182(a)(9)(C). A pending or approved provisional unlawful presence waiver does not provide an individual with the right to obtain advance parole, the right to enter the United States, or the right to obtain and be granted any other immigration benefit. Finally, a pending or approved provisional unlawful presence waiver does not guarantee issuance of an immigrant visa or admission to the United States based upon the immigrant visa.

J. Clarification of 8 CFR 212.7(a)(1) and (a)(4)

DHS also proposes two clarifying amendments to 8 CFR 212.7(a)(1) and (a)(4). *See* proposed 8 CFR 212.7(a)(1) and (a)(4). The first clarifying amendment is necessary because of an amendment to 8 CFR 212.7(a)(1) that DHS included as part of the final rule published in the **Federal Register** on August 29, 2011, at 76 FR 53764 (August 29, 2011 final rule). The August 29, 2011 final rule provides the regulatory framework that will enable USCIS to migrate from a paper file-based, nonintegrated systems environment to an electronic customer-focused, centralized case management environment for benefits processing.

Before the August 29, 2011 final rule entered into effect on November 28, 2011, 8 CFR 212.7(a)(1) read:

> Form I–601 must be filed in accordance with the instructions on the form. When filed at a consular office, Form I–601 shall be forwarded to USCIS for a decision upon conclusion that the alien is admissible but for the grounds for which a waiver is sought.

The August 29, 2011 final rule revised the provision, effective November 28, 2011, so that it now reads:

> Any alien who is *inadmissible under sections 212(g), (h), or (i) of the Act* who is eligible for a waiver of such inadmissibility may file on the form designated by USCIS, with the fee prescribed in *8 CFR 103.7(b)(1)* and in accordance with the form instructions. When filed at the consular section of an embassy or consulate, the Department of State will forward the application to USCIS for a decision after the consular official concludes that the alien is otherwise admissible.

8 CFR 212.7(a)(1), *as amended* at 76 FR 53787 (emphasis added). Deletion of the specific reference to the Form I–601 is consistent with the purpose of the August 29, 2011 final rule by facilitating the move to electronic filing and case management. The reference to aliens ''inadmissible under sections 212(g), (h), or (i) of the Act,'' however, is an error. The cited provisions are not grounds of inadmissibility but are the statutory bases for some of the waivers of inadmissibility that an alien may seek under 8 CFR 212.7. For example, an alien who is inadmissible based on the 3-year and 10-year unlawful presence bar under INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i), uses the same application process to seek a waiver of inadmissibility for unlawful presence under INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v). Therefore, the reference to INA section 212(g), (h) and (i) is removed and replaced with the more general reference ''who is inadmissible under any provision of section 212(a) of the Act.'' In addition, the second sentence in 8 CFR 212.7 about ''forwarding'' of an application from DOS to USCIS is not necessary. The second sentence is an internal case management provision that does not directly affect how an applicant seeks the benefit.

For these reasons, DHS proposes to revise 8 CFR 212.7(a)(1) so that its text more fully aligns with the purpose of the August 29, 2011 final rule. Rather than referring only to three types of waivers that an alien may seek, the amended provision would apply to any waiver of inadmissibility that an alien currently seeks by filing the Form I–601 or any future form that may be designated by USCIS for waivers of grounds of inadmissibility under these provisions. The proposed amendment would remove what is now the second sentence in current 8 CFR 212.7(a)(1). Finally, the proposed amendments would clarify who can apply for the waivers covered under 8 CFR 212.7(a)(1).

DHS also proposes to amend 8 CFR 212.7(a)(4), concerning the validity of a waiver of inadmissibility. Two general principles are that a waiver of inadmissibility applies only to the specific grounds for which a waiver is sought, and that, except as described in this rule with respect to provisional unlawful presence waivers, the waiver, once granted, is valid indefinitely. DHS does not intend to alter these principles, and the proposed amendment includes them.

One exception to these general principles relates to aliens who obtain a waiver of inadmissibility in conjunction with an application for lawful permanent resident status and who are admitted as LPRs on a conditional basis under section 216 or 216A of the Act, 8 U.S.C. 1186 or 1186A. For any such aliens, termination of conditional LPR status would also terminate the validity of the waiver. The waiver would be restored if the alien challenges the termination in removal proceedings and the removal proceedings result in the restoration of the alien's status as an LPR. *See* current 8 CFR 212.7(a)(4) and proposed 8 CFR 212.7(a)(4).

Another exception is necessarily inferred from the statute. Sections 101(a)(15)(K)(i) and 214(d) of the Act, 8 U.S.C. 1101(a)(15)(K)(i) and 1184(d), permit the nonimmigrant admission of the alien fiancé(e) of a citizen of the United States. Although technically issued nonimmigrant visas and admitted as nonimmigrants, the fiancé(e), and any accompanying or following-to-join children, are treated like immigrants who are immediate

relatives. *See Matter of Le,* 25 I&N Dec. 541 (BIA 2011), and *Matter of Sesay,* 25 I&N Dec. 431 (BIA 2011). DOS regulations require such aliens to qualify for immigrant visas. 22 CFR 41.81(d). Since the publication of a final rule on August 10, 1988, DHS has allowed nonimmigrant fiancé(e)s and their children to seek inadmissibility waivers as immigrants. *See* Marriage Fraud Amendments Regulations, 53 FR 30011 (Aug. 10, 1988). This practice is consistent with the principle, recognized in *Matter of Le* and *Matter of Sesay,* that the fiancé(e) and accompanying children are similar in important respects to immigrants who are immediate relatives. The statutory provisions, including INA sections 212(a)(9)(B)(v), (g), (h) and (i), 8 U.S.C. 1182(a)(9)(B)(v), (g), (h), and (i), however, generally make the waivers available only to ''spouses'' of citizens and LPRs. The fiancé(e) is not yet a spouse. For this reason, a waiver granted to a fiancé(e), and any accompanying or following-to-join children, can only be fully effective once the intended marriage takes place. DHS proposes to amend 8 CFR 212.7(a)(4) to make this necessary corollary explicit.

V. Public Input

DHS invites comments from all interested parties, including advocacy groups, nongovernmental organizations, community-based organizations, and legal representatives who specialize in immigration law on any and all aspects of this proposed rule. DHS is specifically seeking comments on:

A. The proposed waiver process;
B. Proposed filing procedures; and
C. Any alternatives to the proposed waiver process that may be more effective than the current USCIS overseas waiver process.

VI. Statutory and Regulatory Requirements

A. 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.

B. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This 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.

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

1. Executive Orders 12866 and 13563 direct agencies to assess the 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 is a ''significant regulatory action,'' although not an economically significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has reviewed this regulation. This effort is consistent with Executive Order 13563's call for agencies to ''consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.''

Summary

The proposed rule would allow certain immediate relatives of U.S. citizens who are physically present in the United States to apply for a provisional waiver of the 3-year or 10-year bar for accrual of unlawful presence prior to departing for consular processing of their immigrant visa. This new provisional unlawful presence waiver process would be available to aliens whose only ground of inadmissibility is, or would be, the 3-year or 10-year unlawful presence bar.

This proposed rule is expected to result in a reduction in the time that U.S. citizens are separated from their alien immediate relatives, thus reducing the financial and emotional hardship for these families. In addition, the Federal Government would achieve increased efficiencies in processing immediate relative visas for individuals subject to the inadmissibility bar.

DHS estimates the discounted total ten-year cost of this rule would range from approximately $100.6 million to approximately $303.8 million at a seven percent discount rate. Compared with the current waiver process, this rule proposes that the provisional waiver applicants submit biometric information. Included in this cost estimate is the cost of collecting biometrics, which we estimate will range from approximately $28 million to approximately $42.5 million at seven percent over ten years. In addition, as this rule significantly streamlines the current process, DHS expects that additional applicants will apply for the provisional waiver compared to the current waiver process. To the extent that this rule induces new demand for immediate relative visas, additional forms such as the Petitions for Alien Relative, Form I–130 will be filed compared to the pre-rule baseline. These additional forms will involve fees being paid by applicants to the Federal Government for form processing and additional opportunity costs of time being incurred by applicants to provide the information required by the forms. The cost estimate for this rule also includes the impact of this induced demand, which we estimate will range from approximately $72.6 million to approximately $261.3 million at seven percent over ten years.

A key uncertainty that impacts any cost estimate of this rule is the uncertainty involving the actual number of people that will avail themselves to this streamlined provisional waiver process. USCIS is not aware of any data that will allow us to estimate with precision the increase in demand due to this rule. For cost estimating purposes, DHS has analyzed the cost of an increase in demand of 25%, 50%, 75% and 90% compared to the existing waiver process.

2. Problems Addressed by the Proposed Changes

Currently, aliens undergoing consular processing of their immediate relative visas cannot apply for an unlawful presence waiver until the consular officer determines that they are inadmissible during their immigrant visa interviews. The current unlawful presence waiver process requires these immediate relatives to remain abroad until USCIS adjudicates the waiver. DOS can only issue the immigrant visa upon notification from USCIS that the waiver has been approved. As previously mentioned, the processing time under the current waiver process can take over one year. Because of these lengthy processing times, U.S. citizens

may be separated from their immediate relative family members for prolonged periods resulting in financial, emotional, and humanitarian hardships. Family unification is a foundational principle of immigration law.

The proposed rule would permit certain immediate relatives to apply for a provisional unlawful presence waiver prior to departing the United States. USCIS would adjudicate the provisional unlawful presence waiver and, if approved, would provide notification to DOS. Thus, the provisionally approved waiver would be available to the consular officer at the immigrant visa interview. If the consular officer determines there are no other impediments to admissibility and that the alien is otherwise eligible for issuance of the immigrant visa, the visa can be immediately issued. This proposed process change would significantly reduce the amount of time U.S. citizens are separated from their immediate alien relatives. In addition, the proposed changes would streamline the immigrant visa waiver process, thereby increasing efficiencies.

3. The Population Affected by the Proposed Rule

As explained above, only certain immediate relatives undergoing consular processing for an immigrant visa who would be inadmissible based on accrual of unlawful presence at the time of the immigrant visa interview would be eligible to apply under the proposed waiver process. Immediate relatives of U.S. citizens who are able to adjust status in the United States are not affected. Immediate relatives who are eligible for adjustment of status in the United States generally include those who were admitted to the United States on nonimmigrant visas (student, tourist, etc.) or who were paroled, including those who are present in the United States after the expiration of their authorized periods of stay.

In most instances, aliens present in the United States without having been admitted or paroled are not eligible to adjust their status and must leave the United States for immigrant visa processing at a U.S. Embassy or consulate abroad to immigrate to the United States. Since these aliens are present in the United States without having been admitted or paroled, many already have accrued more than 180 days of unlawful presence and, if so, would become inadmissible under the unlawful presence bars upon their departure from the United States to attend their immigrant visa interviews. While there may be limited exceptions, the affected population would consist almost exclusively of alien immediate relatives present in the United States without having been admitted or paroled.

DHS does not maintain data on the number of immediate relatives present in the United States who would qualify under the proposed unlawful presence waiver process. The DHS Office of Immigration Statistics (DHS OIS) estimates that the population of unauthorized immigrants (those present without admission or parole) residing in the United States is approximately 10.8 million as of January 2010.[11] While all persons affected by the proposed rule are within the estimated population of 10.8 million, it is estimated that only a portion are immediate relatives of U.S. citizens who meet the criteria required for the new process.

Other estimates are equally inconclusive of the number of immediate relatives of U.S. citizens who are subject to the unlawful presence bars. For example, the Pew Hispanic Trust estimates that there are 9.0 million persons[12] living in mixed status families in the United States that include at least one unauthorized adult alien and at least one U.S.-born child. This, and associated information from the Pew Hispanic Trust, does not provide a reliable means for the calculation of how many of the individuals in these families are U.S. citizens rather than alien immediate relatives, or the proportion of persons with unlawful presence who are the immediate relatives of LPRs rather than U.S. citizens.[13] Nor do these data indicate how many persons within these families are under the age of 18[14] or have alternative methods of normalizing their immigration status without having to leave the United States and, consequently, are unlikely to be affected by the proposed rule.

Data from different sources cannot be reliably combined because of differences in their total estimates for different categories, the estimation and collection methodologies used, or other reasons of incompatibility. Absent information on the number of aliens who are in the United States without having been inspected and admitted or paroled and who are immediate relatives of U.S. citizens, DHS cannot reliably estimate the affected population of the proposed rule.

4. Demand

DHS expects that the proposed rule, once finalized and effective, will increase demand for both immigrant visa petitions for alien relatives and applications for waivers of inadmissibility. Existing demand is constrained by the current process that requires individuals to leave the United States and be separated for unpredictable and sometimes lengthy amounts of time from their immediate relatives in the United States in order to obtain an immigrant visa to become an LPR. Immediate relatives eligible for LPR status if issued a waiver of inadmissibility may be reluctant to avail themselves of the current process because of the length of time that they may be required to wait outside the United States before they can be admitted as LPRs.

The proposed process would allow an immediate relative who meets the eligibility criteria of this proposed rule to apply for a provisional unlawful presence waiver and receive a decision on that application before departing the United States for a consular interview. The streamlined procedure of this proposed rule may reduce the reluctance of aliens who may wish to obtain an immigrant visa to become an LPR but are deterred by the lengthy separation from family members imposed by the current process and uncertainty related to the ultimate success of obtaining an approved inadmissibility waiver.

The costs associated with normalizing a qualifying immediate relative's status also may be a constraint to demand. These current costs include:[15]

1. Petition for Alien Relative, Form I–130, to establish a qualifying relationship to a U.S. citizen; fee cost = $420.00.

2. Application for Waiver of Grounds of Inadmissibility, Form I–601, to obtain a waiver of inadmissibility for unlawful presence; fee cost = $585.00.

[11] Department of Homeland Security, Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2010.* Available at: *http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2010.pdf.*

[12] Pew Hispanic Trust, *Unauthorized Immigrants: Length of Residency, Patterns of Parenthood,* December 2011, pg. 6. Available at *http://www.pewhispanic.org/files/2011/12/Unauthorized-Characteristics.pdf.*

[13] The proposed rule applies only to alien immediate relatives of U.S. citizens, not to alien relatives of lawful permanent residents.

[14] In the Pew Hispanic Trust report *Unauthorized Immigrants: Length of Residency, Patterns of Parenthood,* ''families'' are defined as adults age 18 and older who live with their minor children (i.e., younger than 18) and unmarried, dependent children younger than 25.

[15] Fees quoted are as of December 2011. Source for DOS fees: *http://travel.state.gov/visa/temp/types/types_1263.html#perm.* Source for USCIS fees: *http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=b1ae408b1c4b3210VgnVCM100000b92ca60aRCRD&vgnextchannel=b1ae408b1c4b3210VgnVCM100000b92ca60aRCRD.*

3. Time and expense of preparing the evidence to support the ''extreme hardship'' requirements for a waiver of inadmissibility. The evidentiary requirements could include sworn statements from family members, friends and acquaintances, medical records, psychiatric/psychological records, school records, evidence of illness of family members, financial information and tax returns, letters from teachers, support letters from churches and community organizations, evidence of health and emotional problems that may result from the separation, and such other documentation; cost = variable.

4. Travel from the United States to the immediate relative's home country or country where the visa is being processed, and any additional living expenses required to support two households while awaiting an immigrant visa; cost = variable.

5. Immigrant visa processing fees paid to: (a) The Department of State ($330), processed on the basis of a USCIS-approved I–130 petition; and (b) USCIS ($165). Total fee cost = $495.00.

6. An Affidavit of Support Under Section 213A of the Act, Form I–864; fee cost = $88.00.

7. Immigrant visa background and security check surcharge per person applying for any immigrant visa category; fee cost = $74.00.

8. Other forms, affidavits, etc. as required for individual applications; cost = variable.

The costs listed above are not new to this proposed rule; they are required under the current process.

Under the proposed process, aliens would be required to submit biometrics after filing the provisional unlawful presence waiver application, along with the corresponding fee (currently $85.00). This biometric fee would be in addition to the visa security fee required by DOS for the immigrant visa application. The proposed requirement to submit biometrics, with the associated fee and travel costs, would be a small portion of the total costs of the visa application process.

As there are no annual limitations on the number of immediate relative visas that can be issued, the increase in the annual demand for waivers would be determined by the size of the affected population and the increased propensity to apply. As previously mentioned, a potential increase in demand might be limited, as is current demand, by the costs previously noted.

With the absence of an estimate of the affected population, we have calculated a preliminary estimate for the increase in demand based on historical records and assumptions on the range of demand. Forecasts of demand based on historical volumes of immediate relatives who are seeking waivers for unlawful presence are limited, at best, due to the lack of data. Historical estimates show only those aliens who have taken the steps to obtain an immigrant visa to become LPRs. The data are silent, however, on that population of aliens who have not initiated action to become LPRs due to current uncertainties and risks. Therefore, we recognize that the estimates provided below may understate what would actually occur if this rule becomes effective.

The current level of demand, shown in Table 1, is a result of the existing constraints described previously: The possibility of lengthy separation of immediate relatives and their U.S. citizen relatives; uncertainty of the ultimate success of obtaining an approved inadmissibility waiver; and the financial constraints (costs). Because of the variability in timing between when immigrant visa petitions and waiver applications are submitted and adjudicated and the time when an immigrant visa is issued, comparisons between the totals within a single year are not meaningful.

TABLE 1—HISTORICAL IMMIGRATION DATA—FISCAL YEARS 2001 THROUGH 2010

Fiscal year	Petitions for alien relative, Form I–130	Immediate relative visas issued	Ineligibility finding [16]	Ineligibility overcome [17]
2001	[18] 903,348	172,087	5,384	6,157
2002	392,655	178,142	2,555	3,534
2003	362,756	154,760	3,301	1,764
2004	367,436	151,724	4,836	2,031
2005	370,427	180,432	7,140	2,148
2006	437,744	224,187	13,710	3,264
2007	546,833	219,323	15,312	7,091
2008	172,000	238,848	31,069	16,922
2009	188,749	227,517	24,886	12,584
2010	217,238	215,947	22,093	18,826
10 year average	395,919	196,297	13,029	7,432
Ineligibility Findings overcome (10 year average)	n/a	n/a	n/a	57.0%

Note: Sums may not total due to rounding.

Sources: Petitions for Alien Relative, Form I–130, from USCIS. Immediate relative visas issued are from individual annual Report(s) of the Visa Office, Department of State Visa Statistics, accessible at *http://travel.state.gov/visa/statistics/statistics_1476.html*. Ineligibility data are also from the individual annual report(s) of the Visa Office, Department of State Visa Statistics and appears in Table XX of each annual report.

As is evident, each of the data sets in Table 1 demonstrates a wide variability. The estimate of future demand under the new process would be determined by the number of ineligibility findings. The data for Ineligibility Findings and Ineligibility Overcome in Table 1 refer only to ineligibility where the grounds of inadmissibility were the 3-year or the 10-year unlawful presence bar. This data, however, also includes immediate relatives of LPRs who are not affected by this rule. DHS has provided the data in Table 1 to provide historical context noting that the last three years of ineligibility findings are well above the 10-year historical average. For this reason, DHS used the estimate for the future filings for waivers of inadmissibility made by the USCIS

[16] Both the Ineligibility Finding and Ineligibility Overcome columns refer only to ineligibility in which the grounds of inadmissibility were the 3-year or the 10-year unlawful presence bar. This figure is not limited to immigrant petitioners who are immediate relatives of U.S. citizens and includes relatives of LPRs. Ineligibility findings were low between 2001 and 2005/2006 because many individuals were not seeking immigrant visas through the consular process overseas; instead, they adjusted to lawful permanent resident status stateside under INA section 245(i).

[17] *Id.* Ineligibility Findings/Ineligibility Overcome includes immediate relatives who are not affected by the proposed rule. Comparisons between the totals of Ineligibility Findings/Ineligibility Overcome within a single year are not meaningful because of the variability in timing between when an ineligibility finding is made and when (and if) it is overcome.

[18] The number of Petitions for Alien Relative, Form I–130, filed in 2001 is high because many filed petitions in anticipation of the INA section 245(i) sunset date, which occurred on April 30, 2001.

Office of Performance and Quality (OPQ), Data Analysis and Reporting Branch, as the basis for the estimated future filings. The current OPQ estimate for future waivers of inadmissibility is approximately 24,000 per year. Currently, 80 percent (or 19,200) of all waivers of inadmissibility are filed on the basis of inadmissibility due to the unlawful presence bars.[19] This estimate is further confirmed when examining the most recent 5-year period between FY 2006–FY 2010 where the average unlawful presence ineligibility finding is approximately 21,400. In light of the recent upward trend of immediate relative visas issued and ineligibility findings presented in Table 1, OPQ's estimate of 19,200 applications for waivers of unlawful presence represents as reasonable of an approximation as possible for future demand based on available data of the current waiver process.

DHS anticipates that the changes proposed would encourage immediate relatives who are unlawfully present to initiate actions to obtain an immigrant visa to become LPRs when they otherwise would be reluctant to under the current process. As confidence in the new process increases, demand would be expected to trend upward. The DHS preliminary estimates were formulated based on general assumptions of the level of constraints on demand removed by the proposed rule. DHS does not know of any available data that would enable a calculation of the increases in filing propensities or an increase in the number of inadmissibility findings or the percentage of inadmissibility findings where the inadmissibility bar is overcome.

Table 2 indicates the estimate of demand under the current process. This is the baseline demand expected in the absence of the proposed rule.

TABLE 2—BASELINE ESTIMATES OF GROWTH IN PETITIONS FOR ALIEN RELATIVES AND INELIGIBILITY FINDINGS BASED ON UNLAWFUL PRESENCE UNDER THE CURRENT PROCESS

Fiscal year	Petitions for alien relative, Form I–130[20]	Ineligibility finding[21]
Year 1	405,510	19,665
Year 2	415,340	20,142
Year 3	425,410	20,630
Year 4	435,720	21,130
Year 5	446,280	21,642
Year 6	457,100	22,167
Year 7	468,180	22,704
Year 8	479,530	23,255
Year 9	491,150	23,818
Year 10	503,050	24,395
10 Year Totals	4,527,570	219,549

Note: Sums may not total due to rounding.

Based on the data available on requests for waivers under the current process, Table 2 forecasts the number of findings of inadmissibility due to accrual of unlawful presence. The results presented in Table 2 are meant to show forecasts for future demand for waivers due to unlawful presence bars under the current process. DHS assumes that in every case where a consular officer determines inadmissibility based on unlawful presence, the alien would apply for a waiver. Thus, Table 2 represents the baseline totals we would expect in the absence of the proposed waiver process.

In these calculations, the petitions for an alien relative made by U.S. citizens are expected to increase annually by the 2.4 percent compound annual growth rate for the undocumented population for the previous 10 years based on reports by the DHS OIS.[22] This is an imperfect calculation, as the undocumented population has declined since its peak in 2007,[23] but because of the data association problems noted previously, DHS used the 10-year (long term) compound average growth rate.

The ineligibility findings in Table 2 are calculated using the estimate of 19,200 average annual waivers filed on the basis of unlawful presence, which equates to 0.04849 ineligibility findings for every alien relative petition based on the 10-year average. Again, these calculations are imperfect since they are based on immigrant visas granted for the alien relative population (both immediate relative and family preference).

DHS does not have data available that would permit an estimation of the escalation of change in this variable. Thus, this estimate of future petitions for alien relatives and ineligibility findings is based on a range of assumptions concerning the current constraint on demand. As a result, Table 3 provides a scenario analysis utilizing estimates of various amounts of constraint on demand. For example, an assumption that demand is currently constrained by 25 percent would mean that there would be a 25 percent increase from the baseline in the number of I–601A applications for each year under the proposed rule. The findings of this range analysis are presented in Table 3.

[19] The 80 percent estimate was calculated by USCIS based on data from all I–601s completed by overseas offices from August 2010 to October 28, 2011 and comparing those that listed only unlawful presence as an inadmissibility ground.

[20] The first year estimate is the 10 year average of 395,919 multiplied by the 2.4 percent compound annual growth rate for the undocumented population for the previous 10 years reported in the DHS Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2010,* pg. 1. Subsequent years are increased at the same 2.4 percent growth rate. As a comparison, the U.S. population as a whole rose at a compound annual growth rate of 0.930 percent over the same period.

[21] Ineligibility Findings are calculated at the USCIS estimate of .04849 per 100,000 petitions for an alien relative.

[22] DHS Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2010,* pg. 1. The 2.4 percent (rounded) compound annual growth rate is calculated from the estimated populations of unauthorized immigrants living in the United States in 2000 (8.5 million) and in 2010 (10.8 million).

[23] *Id.*

TABLE 3—PRELIMINARY ESTIMATES OF INADMISSIBILITY FINDINGS REQUIRING AN UNLAWFUL PRESENCE WAIVER, FORM I–601A ASSOCIATED WITH THE INCREASED DEMAND OF THE PROPOSED RULE

Year	Expected demand for Form I–601A with current constrained demand of			
	25 Percent	50 Percent	75 Percent	90 Percent
Year 1	24,581	29,498	34,414	37,364
Year 2	25,177	30,213	35,248	38,269
Year 3	25,788	30,945	36,103	39,197
Year 4	26,413	31,695	36,978	40,147
Year 5	27,053	32,463	37,873	41,120
Year 6	27,709	33,250	38,792	42,117
Year 7	28,380	34,056	39,733	43,138
Year 8	29,068	34,882	40,696	44,184
Year 9	29,773	35,727	41,682	45,255
Year 10	30,494	36,593	42,692	46,351
10 Year Totals	274,436	329,324	384,211	417,143

Note: Numbers may not total due to rounding.

Table 4 is the expected increase in inadmissibility waiver applications due to the proposed rule. These estimates are obtained by subtracting the baseline estimates in Table 2 (without the proposed rule) from the preliminary estimates under the proposed rule in Table 3.

TABLE 4—PRELIMINARY ESTIMATES OF THE ADDITIONAL INELIGIBILITY FINDINGS REQUIRING AN INADMISSIBILITY WAIVER UNDER THE PROPOSED RULE

[Induced demand][24]

Year	Additional ineligibility findings requiring an inadmissibility waiver with current constrained demand of			
	25 Percent	50 Percent	75 Percent	90 Percent
Year 1	4,916	9,833	14,749	17,699
Year 2	5,035	10,071	15,106	18,128
Year 3	5,158	10,315	15,473	18,567
Year 4	5,283	10,565	15,848	19,017
Year 5	5,411	10,821	16,232	19,478
Year 6	5,542	11,083	16,625	19,950
Year 7	5,676	11,352	17,028	20,434
Year 8	5,814	11,627	17,441	20,929
Year 9	5,955	11,909	17,864	21,436
Year 10	6,099	12,198	18,296	21,956
10 Year Totals	54,887	109,775	164,662	197,594

Note: Numbers may not total due to rounding.

5. Costs

The proposed rule would require provisional waiver applicants to submit biometrics to USCIS. This is the only new cost applicants would incur under the proposed provisional unlawful presence waiver process in comparison to the current waiver process. The other costs of the proposed rule emanate from the increase in the demand created by the proposed rule. These other costs include the fees and preparation costs for forms prepared by individuals who would not file under the current rule.

For the biometric collection, the alien immediate relative would incur the following costs associated with submitting biometrics with an application for the provisional unlawful presence waiver: The required USCIS fee and the opportunity and mileage costs of traveling to a USCIS ASC to have the biometric recorded.

The current USCIS fee for collecting and processing biometrics is $85.00. In addition, DHS estimates the opportunity costs for travel to an ASC in order to have the biometric recorded based on the cost of travel (time and mileage) plus the average wait time to have the biometric collected. While travel times and distances will vary, DHS estimates that the average round-trip to an ASC will be 50 miles, and that the average time for that trip will be 2.5 hours. DHS estimates that an alien will wait an average of one hour for service and to have biometrics collected.

DHS recognizes that the individuals impacted by the proposed rule are unlawfully present and are generally not eligible to work; however, consistent with other DHS rulemakings, we use wage rates as a mechanism to estimate the opportunity or time valuation costs associated with the required biometric collection. The Federal minimum wage is currently $7.25 per hour.[25] In order to anticipate the full opportunity cost of providing biometrics, DHS multiplied

[24] The increased ineligibility findings in Table 4 are the difference in ineligibility findings from the different assumptions of the level of constrained demand in Table 3 and the baseline ineligibility findings shown in Table 2.

[25] U.S. Dep't of Labor, Wage and Hour Division. The minimum wage is as of July 24, 2009. Bureau of Labor Statistics, Occupational Employment and Wages—May 2010 National Occupational Employment and Wage Estimates (May 17, 2011), available at: *http://www.dol.gov/whd/minimumwage.htm.http://www.bls.gov/news.release/pdf/ocwage.pdf.*

the minimum hourly wage rate by 1.44 to account for the full cost of employee benefits such as paid leave, insurance, and retirement, which equals $10.44 per hour.[26] In addition, the cost of travel includes a mileage charge based on the estimated 50 mile round trip at the GSA rate of $0.51 per mile, which equals $25.50 for each applicant.

Using an opportunity cost of time of $10.44 per hour and the 3.5 hour estimated time for travel and service and the mileage charge of $25.50, DHS estimates that the cost per provisional waiver applicant to be $62.04 for travel to and service at the ASC.[27] When the $85.00 biometric fee is added, the total estimated additional cost per provisional unlawful presence waiver over the current waiver process is $147.04. All other fees charged by USCIS and DOS to apply for immediate relative visas remain the same under the current and proposed processes.[28]

The incremental costs of the biometric requirement of the rule are computed as the $147.04 cost per provisional unlawful presence waiver multiplied by the total number of applicants for provisional waivers applying after the proposed rule is finalized. This population is represented in Table 3. The incremental costs of the additional biometric fee are shown in Table 5.

TABLE 5—COSTS OF PROPOSED BIOMETRIC REQUIREMENT TO IMMEDIATE RELATIVES FILING A PROVISIONAL WAIVER APPLICATION

[Table 3 multiplied by $147.04]

Year	Additional inadmissibility waiver application fees with current constrained demand of			
	25 Percent	50 Percent	75 Percent	90 Percent
Year 1	$3,614,451	$4,337,342	$5,060,232	$5,493,966
Year 2	3,702,070	4,442,484	5,182,898	5,627,146
Year 3	3,791,827	4,550,193	5,308,558	5,763,577
Year 4	3,883,724	4,660,468	5,437,213	5,903,260
Year 5	3,977,849	4,773,418	5,568,988	6,046,330
Year 6	4,074,291	4,889,149	5,704,007	6,192,922
Year 7	4,173,051	5,007,661	5,842,271	6,343,037
Year 8	4,274,217	5,129,061	5,983,904	6,496,811
Year 9	4,377,791	5,253,349	6,128,907	6,654,242
Year 10	4,483,859	5,380,631	6,277,403	6,815,466
10 Year Totals Undiscounted	40,353,130	48,423,756	56,494,382	61,336,758
10 Year Totals Discounted at 7.0 percent	27,967,676	33,561,211	39,154,746	42,510,867
10 Year Totals Discounted at 3.0 percent	34,221,714	41,066,057	47,910,400	52,017,006

Note: Numbers may not total due to rounding.

In addition to the costs of the biometric requirement, DHS expects that the proposed rule will induce an increase in demand for immediate relative visas, which will generate new fees paid to the USCIS and DOS. As the only new requirement imposed by this rule on provisional waiver applicants compared with the current waiver process is biometrics, fees collected for filing forms that are already required (such as the Form I–130) are not costs of this rule. The new fees are those generated by the additional demand shown in Table 4 and are transfers made by applicants to USCIS and DOS to cover the cost of processing the forms. In addition to the fees, there are nominal costs associated with completing the forms. We estimate the amount of these fees and their associated preparation costs to give a more complete estimate of the impact of this rule. The additional fees and preparation costs are shown in Table 6.

In determining the preparation cost for the forms, different labor rates were used depending on the citizenship status of the petitioner. If the form is completed by the alien immediate relative (Form I–601A), the loaded minimum wage of $10.44 per hour was used. If the form is completed by a U.S. citizen, we used the mean hourly wage for ''all occupations'' as reported by the Bureau of Labor Statistics and then adjusted that wage upward to account for the costs of employee benefits, such as annual leave, for a fully loaded hourly wage rate of $30.74.[29] The times to complete the forms are based on the USCIS form instructions for the individual forms.

These costs are calculated by the formula:

1. Cost of Form I–130: Preparation cost = ($30.74 × 1.5 hours) = $46.12; USCIS fee to cover processing costs = $420.00. Total cost = $466.12.
2. Cost of Form I–601A: Preparation cost = ($10.44 × 1.5 hours) = $15.66; USCIS fee to cover processing costs = $585.00. Total cost = $600.66.
3. Cost of Form I–864: Preparation cost = ($30.74 × 6.0 hours) = $184.46; DOS fee to cover processing costs = $88.00. Total cost = $272.46.
4. Cost of Immigrant Visa Processing Fees: DOS fee to cover processing costs = $330; USCIS fee to cover processing costs = $165. Total cost = $495.00.
5. Cost of Visa Security fee: Preparation cost = DOS fee to cover processing costs = $74.00.

Based on the above, the total costs per application: ($466.12 + 600.66 + 272.46 + 495.00 + 74.00) = $1,908.24.

[26] U.S. Department of Labor, Bureau of Labor Statistics, Economic News Release, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, March 2011, viewed online at *http://www.bls.gov/news.release/ecec.t01.htm.*

[27] ($10.44 per hour × 3.5 hours) + ($0.51 per mile × 50 miles) = $62.04.

[28] The proposed Application for a Provisional Waiver of Inadmissibility, Form I–601A, would carry the same USCIS fee as Form I–601.

[29] The 30.74 rate is calculated by multiplying the $21.35 average hourly wage for all occupations May 2010 (available at *http://www.bls.gov/oes/current/oes_nat.htm#00-0000*) by the 1.44 fully loaded multiplier.

TABLE 6—COSTS FOR PREPARING AND FILING USCIS AND DOS FORMS

[Table 3 multiplied by $1,908.24]

Year	Additional preparation costs and filing fees with current constrained demand of			
	25 Percent	50 Percent	75 Percent	90 Percent
Year 1	$9,381,448	$18,762,897	$28,144,345	$33,773,214
Year 2	9,608,865	19,217,730	28,826,595	34,591,914
Year 3	9,841,834	19,683,667	29,525,501	35,430,601
Year 4	10,080,355	20,160,710	30,241,065	36,289,278
Year 5	10,324,660	20,649,320	30,973,979	37,168,775
Year 6	10,574,980	21,149,960	31,724,940	38,069,927
Year 7	10,831,315	21,662,630	32,493,945	38,992,734
Year 8	11,093,896	22,187,793	33,281,689	39,938,027
Year 9	11,362,724	22,725,449	34,088,173	40,905,808
Year 10	11,638,030	23,276,060	34,914,091	41,896,909
10 Year Totals Undiscounted	104,738,108	209,476,215	314,214,323	377,057,188
10 Year Totals Discounted at 7.0 percent	72,591,182	145,182,365	217,773,547	261,328,257
10 Year Totals Discounted at 3.0 percent	88,823,781	177,647,563	266,471,344	319,765,613

Note: Sums may not total due to rounding.

The totals in Table 6 are calculated by multiplying the induced demand shown in Table 4 by the $1,908.24 shown above. We acknowledge there are additional costs to the existing process, such as travel from the United States to the immediate relative's home country where the immigrant visa is being processed and the additional expense of supporting two households while awaiting an immigrant visa. Such costs are highly variable and depend on the circumstances of the specific petitioner. We did not estimate the impacts of these variable costs. To the extent that this rule allows immediate relatives to reduce the time spent in their home country, this rule would allow for such existing costs to be reduced and these savings represent a benefit of this rule.

The total cost to applicants is shown in Table 7 as the sum of Table 5 and Table 6.

TABLE 7—TOTAL COSTS TO APPLICANTS OF THE PROPOSED RULE

[Table 5 plus Table 6]

Year	Estimated total cost current constrained demand of			
	25 Percent	50 Percent	75 Percent	90 Percent
Year 1	$12,995,900	$23,100,239	$33,204,577	$39,267,181
Year 2	13,310,935	23,660,213	34,009,492	40,219,059
Year 3	13,633,661	24,233,860	34,834,059	41,194,178
Year 4	13,964,079	24,821,178	35,678,278	42,192,538
Year 5	14,302,508	25,422,738	36,542,968	43,215,105
Year 6	14,649,271	26,039,109	37,428,947	44,262,850
Year 7	15,004,366	26,670,291	38,336,216	45,335,771
Year 8	15,368,114	27,316,854	39,265,594	46,434,838
Year 9	15,740,515	27,978,798	40,217,080	47,560,050
Year 10	16,121,890	28,656,692	41,191,494	48,712,375
10 Year Totals Undiscounted	145,091,238	257,899,971	370,708,705	438,393,945
10 Year Totals Discounted at 7.0 percent	100,558,858	178,743,575	256,928,293	303,839,123
10 Year Totals Discounted at 3.0 percent	123,045,496	218,713,620	314,381,745	371,782,619

Note: Sums may not total due to rounding.

Costs to the Federal Government include the possible costs of additional adjudication personnel associated with increased volume and the associated equipment (computers, telephones) and occupancy costs (if additional space is required). However, we expect these costs to be offset by the additional fee revenue collected for form processing. Consequently, this rule does not impose additional costs on the Federal Government.

6. Benefits

The benefits of the proposed rule are the result of streamlining the immigrant visa waiver process. The primary benefits of the proposed changes are qualitative and result from reduced separation time for U.S. citizens and their alien relatives. In addition to the obvious humanitarian and emotional benefits derived from family reunification, there also would be significant financial benefits accruing to the U.S. citizen due to the shortened period he or she would have to financially support the alien relative abroad. DHS is currently unable to estimate the average duration of time an immediate relative must spend abroad while awaiting waiver adjudication under the current process, and so cannot predict how the time spent apart would be reduced under the proposed provisional waiver process.

As a result of streamlining the unlawful presence waiver process, there also would be efficiencies realized by both USCIS and DOS. The proposed process would enable USCIS to process and adjudicate the provisional unlawful presence waivers domestically. As a result, USCIS could move a large part of its workload to Service Centers or field offices with resources that are less expensive than overseas staffing resources and that are flexible enough to

accommodate filing surges. In addition, the proposed process would allow DOS to review these cases once, as opposed to the current unlawful presence process where these cases are reviewed twice, at a minimum. DHS anticipates that the new process will make the immigrant visa process more efficient.

DHS encourages public comment on the benefits, both quantitative and qualitative, of this proposed rule.

D. Executive Order 13132

This proposed rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 Civil Justice Reform

Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DHS has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting and recordkeeping requirements inherent in a rule. *See* Public Law 104–13, 109 Stat. 163 (May 22, 1995). This proposed rule requires that an applicant requesting a provisional unlawful presence waiver complete an Application for Provisional Waiver of Unlawful Presence, Form I–601A. This form is considered an information collection and is covered under the PRA. DHS will be submitting an information collection request to OMB for review and approval under the PRA.

Accordingly, DHS is requesting comments on this information collection for 60 days until June 1, 2012. Comments on this information collection should address one or more of the following four points:

(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 the agency's 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

a. *Type of information collection:* Revised information collection.

b. *Abstract:* This collection will be used by individuals who file a request for a provisional unlawful presence waiver of the inadmissibility grounds under INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v). Such individuals are subject to biometric collection in connection with the filing of the waiver.

c. *Title of Form/Collection:* Application for Provisional Unlawful Presence Waiver.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–601A, U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Individuals or Households: Individuals who are immediate relatives of U.S. citizens and who are applying from within the United States for a waiver of inadmissibility under INA section 212(a)(9)(B)(v) prior to obtaining an immigrant visa abroad.

f. *An estimate of the total numbers of respondents:* 38,277.

g. *Hours per response:* 1.5 hours per response.

h. *Total Annual Reporting Burden:* 57,416.

Comments concerning this form can be submitted to Sunday Aigbe, Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2020.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. 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.

DHS has reviewed this regulation in accordance with the Regulatory Flexibility Act and certifies that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is that this rule directly regulates individuals who are the immediate relatives of U.S. citizens seeking to apply for an unlawful presence waiver of inadmissibility in order to be eligible to obtain an immigrant visa outside the United States. The impact is on these persons as individuals, so that they are not, for purposes of the Regulatory Flexibility Act, within the definition of small entities established by 5 U.S.C. 601(6).

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Authority delegations (government agencies), Freedom of Information; Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows.

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.7 is amended by revising paragraph (b)(1)(i)(AA) to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(AA) *Application for Waiver of Ground of Inadmissibility (Form I–601) and Application for Provisional Unlawful Presence Waiver (I–601A).* For filing an application for waiver of grounds of inadmissibility or an application for a provisional unlawful presence waiver: $585.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2. Section 212.1(q) also issued under section 702, Pub. L. 110–229, 122 Stat. 754, 854.

4. Section 212.7 is amended by:

a. Revising paragraphs (a)(1), (a)(3), and (a)(4); and

b. Adding paragraph (e).

The revisions and addition read as follows:

§ 212.7 Waivers of certain grounds of inadmissibility.

(a)(1) *Application.* Except as provided by 8 CFR 212.7(e), an applicant for an immigrant visa, adjustment of status, or a K or V nonimmigrant visa who is inadmissible under any provision of section 212(a) of the Act for which a waiver is available under section 212 of the Act may apply for the related waiver by filing the form designated by USCIS, with the fee prescribed in 8 CFR 103.7(b)(1), and in accordance with the form instructions. Certain immigrants may apply for a provisional unlawful presence waiver of inadmissibility as specified in 8 CFR 212.7(e).

* * * * *

(3) *Decision.* If the waiver application is denied, USCIS will provide a written decision and notify the applicant and his or her attorney or accredited representative and will advise the applicant of appeal procedures, if any, in accordance with 8 CFR 103.3. The denial of a provisional unlawful presence waiver is governed by 8 CFR 212.7(e).

(4) *Validity.* (i) A provisional unlawful presence waiver granted according to paragraph (e) of this section is valid subject to the terms and conditions as specified in paragraph (e). In any other case, approval of an immigrant waiver of inadmissibility under this section applies only to the grounds of inadmissibility, and the related crimes, events, or incidents that are specified in the application for waiver.

(ii) Except for K–1 and K–2 nonimmigrants and aliens lawfully admitted for permanent residence on a conditional basis, an immigrant waiver of inadmissibility is valid indefinitely, even if the applicant later abandons or loses lawful permanent resident status.

(iii) For a K–1 or K–2 nonimmigrant, approval of the waiver is conditioned on the K–1 nonimmigrant marrying the petitioner; if the K–1 nonimmigrant marries the K nonimmigrant petitioner, the waiver becomes valid indefinitely, subject to paragraph (a)(4)(iv) of this section, even if the applicant later abandons or loses lawful permanent resident status. If the K–1 does not marry the K nonimmigrant petitioner, the K–1 and K–2 nonimmigrants remain inadmissible for purposes of any application for a benefit on any basis other than the proposed marriage between the K–1 and the K nonimmigrant petitioner.

(iv) For an alien lawfully admitted for permanent residence on a conditional basis under section 216 of the Act, removal of the conditions on the alien's status renders the waiver valid indefinitely, even if the applicant later abandons or loses lawful permanent resident status. Termination of the alien's status as an alien lawfully admitted for permanent residence on a conditional basis also terminates the validity of a waiver of inadmissibility that was granted to the alien. Separate notification of the termination of the waiver is not required when an alien is notified of the termination of residence under section 216 of the Act, and no appeal will lie from the decision to terminate the waiver on this basis. If the alien challenges the termination in removal proceedings, and the removal proceedings end in the restoration of the alien's status, the waiver will become effective again.

(v) Nothing in this subsection precludes USCIS from reopening and reconsidering a decision if the decision is determined to have been made in error.

* * * * *

(e) *Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives.* The provisions of this paragraph (e) are applicable to certain aliens who are pursuing consular immigrant visa processing as an immediate relative of a U.S. citizen.

(1) *In general.* USCIS may adjudicate applications for a provisional unlawful presence waiver of inadmissibility based on section 212(a)(9)(B)(v) of the Act filed by eligible aliens described in paragraph (e)(2) of this section. USCIS will only approve such provisional unlawful presence waiver applications in accordance with the conditions outlined in paragraph (e) of this section. Consistent with section 212(a)(9)(B)(v) of the Act, the decision whether to approve a provisional unlawful presence waiver application is discretionary.

(2) *Eligible aliens.* Except as provided in paragraph (e)(3) of this section, an alien may be eligible to apply for and receive a provisional unlawful presence waiver for the grounds of inadmissibility under section 212(a)(9)(B)(i)(I) or (II) of the Act if he or she:

(i) Is present in the United States at the time of filing the application for a provisional unlawful presence waiver, and for biometrics collection at a USCIS Application Support Center;

(ii) Upon departure, would be inadmissible only under section 212(a)(9)(B)(i) of the Act at the time of the immigrant visa interview;

(iii) Qualifies as an immediate relative under section 201(b)(2)(A)(i) of the Act;

(iv) Is the beneficiary of an approved immediate relative petition;

(v) Has a case pending with the Department of State based on the approved immediate relative petition and has paid the immigrant visa processing fee as evidenced by a State Department Visa Processing Fee Receipt;

(vi) Will depart from the United States to obtain the immediate relative immigrant visa; and

(vii) Meets the requirements for a waiver provided in section 212(a)(9)(B)(v) of the Act, except that the alien must show extreme hardship to his or her U.S. citizen spouse or parent.

(3) *Ineligible Aliens.* Notwithstanding paragraph (e)(2) of this section, an alien is ineligible to apply for or receive a provisional unlawful presence waiver under paragraph (e) of this section if:

(i) USCIS has reason to believe that the alien may be subject to grounds of inadmissibility other than unlawful presence under section 212(a)(9)(B)(i)(I) or (II) of the Act at the time of the immigrant visa interview with the Department of State;

(ii) The alien is under the age of 17;

(iii) The alien does not have a case pending with the Department of State, based on the approved immediate relative petition, and has not paid the immigrant visa processing fee;

(iv) The alien has been scheduled for an immigrant visa interview at a U.S. Embassy or Consulate abroad at the time the application is received by USCIS;

(v) The alien is in removal proceedings that have not been terminated or dismissed;

(vi) The alien has not had the charging document (Notice to Appear) to initiate removal proceedings cancelled;

(vii) The alien is in removal proceedings that have been administratively closed but not subsequently reopened for the issuance of a final voluntary departure order;

(viii) The alien is subject to a final order of removal issued under section 235, 238, or 240 of the Act or any other provision of law (including an in absentia removal order under section 240(b)(5) of the Act);

(ix) The alien is subject to reinstatement of a prior removal order under section 241(a)(5) of the Act;

(x) The alien has a pending application with USCIS for lawful permanent resident status; or

(xi) The alien has previously filed a provisional unlawful presence waiver application;

(4) *Filing.* (i) An application for a provisional waiver of the grounds of inadmissibility for the unlawful presence bars under section 212(a)(9)(B)(i)(I) or (II) of the Act must be filed in accordance with 8 CFR part 103 and on the form designated by USCIS. The prescribed fee under 8 CFR 103.7(b)(1) and supporting documentation must be submitted in accordance with the form instructions.

(ii) An application for a provisional unlawful presence waiver application will be rejected and the fee and package returned to the alien if the alien:

(A) Fails to pay the required fees for the waiver application or to pay the correct fee;

(B) Fails to sign the waiver application;

(C) Fails to provide his or her family name, domestic home address, and date of birth;

(D) Is under the age of 17 years;

(E) Does not include evidence of an approved petition that classifies the alien as an immediate relative of a U.S. citizen;

(F) Does not include a copy of the fee receipt evidencing that the alien has paid the immigrant visa processing fee to DOS;

(G) Has indicated on the provisional unlawful presence waiver application that an immigrant visa interview has been scheduled with DOS; or

(H) Has not indicated on the provisional unlawful presence waiver application that the qualifying relative is a U.S. citizen spouse or parent.

(5) *Biometrics.* (i) All aliens who apply for a provisional unlawful presence waiver under this section will be required to provide biometrics in accordance with 8 CFR 103.16 and 103.17, as specified on the form instructions.

(ii) *Failure to appear for biometrics capture.* If an alien fails to appear for biometrics capture, the provisional unlawful presence waiver application will be considered abandoned and denied pursuant to 8 CFR 103.2(b)(13). The alien may not appeal or file a motion to reopen or reconsider an abandonment denial under 8 CFR 103.5.

(6) *Burden of proof.* The alien has the burden to establish eligibility for the provisional unlawful presence waiver as described in this paragraph of this section, and under section 212(a)(9)(B)(v) of the Act, including that the alien merits a favorable exercise of the Secretary's discretion.

(7) *Adjudication.* USCIS will adjudicate the provisional unlawful presence waiver application in accordance with this paragraph of this section and section 212(a)(9)(B)(v) of the Act. USCIS also may require the alien and the U.S. citizen petitioner to appear for an interview pursuant to 8 CFR 103.2(b)(9). If USCIS finds that the alien does not meet the eligibility requirements for the provisional unlawful presence waiver as described in this paragraph (e), USCIS will deny the waiver application. Notwithstanding 8 CFR 103.2(b)(16), USCIS may deny an application for a provisional unlawful presence waiver without prior issuance of a request for evidence or notice of intent to deny.

(8) *Notice of Decision.* USCIS will notify the alien or the alien's attorney of record or accredited representative of the decision in accordance with 8 CFR 103.2(b)(19). USCIS also may notify the Department of State. Denial of an application for a provisional unlawful presence waiver is without prejudice to the alien filing a waiver application under paragraph (a)(1) of this section after the immigrant visa interview overseas. Accordingly, denial of a request for a provisional unlawful presence waiver is not a final agency action for purposes of section 10(c) of the Administrative Procedure Act, 5 U.S.C. 704.

(9) *Withdrawal of waiver requests.* An alien may withdraw his or her request for a provisional unlawful presence waiver at any time before the final decision, but the alien will not be permitted to later file a new provisional unlawful presence waiver. Once the case is withdrawn, USCIS will close the case and notify the alien and his or her attorney or accredited representative.

(10) *Appeals and Motions to Reopen.* There is no administrative appeal from a denial of a request for a provisional unlawful presence waiver under this section. The alien may not file, pursuant to 8 CFR 103.5, a motion to reopen or reconsider a denial of a provisional unlawful presence waiver application under this section.

(11) *Approval and Conditions.* A provisional unlawful presence waiver granted under this section:

(i) Does not take effect unless, and until, the alien who applied for and obtained the provisional unlawful presence waiver:

(A) Departs from the United States;

(B) Appears for an immigrant visa interview at a U.S. Embassy or consulate; and

(C) Is determined to be admissible and otherwise eligible for an immigrant visa by a Department of State consular officer in light of the approved provisional unlawful presence waiver.

(ii) Waives the alien's inadmissibility under section 212(a)(9)(B) of the Act only for purposes of the application for an immigrant visa and admission to the United States as an immediate relative of a U.S. citizen.

(iii) Does not waive any ground of inadmissibility other than the grounds of inadmissibility under section 212(a)(9)(B)(i)(I) or (II) of the Act.

(12) *Validity.* Until the provisional unlawful presence waiver takes full effect as provided in paragraph (e)(11) of this section, USCIS may reopen and reconsider its decision at any time. Once a provisional unlawful presence waiver takes full effect as defined in paragraph (e)(11), the period of unlawful presence for which the provisional unlawful presence waiver is granted is waived permanently and, in accordance with and subject to paragraph (a)(4) of this section, the waiver is valid indefinitely.

(13) *Automatic Revocation.* The approval of a provisional unlawful presence waiver is revoked automatically if:

(i) The consular officer determines at the time of the immigrant visa interview that the alien is inadmissible on grounds other than section 212(a)(9)(B)(i)(I) or (II) of the Act;

(ii) The immigrant visa petition approval associated with the provisional unlawful presence waiver is at any time revoked, withdrawn, or rendered invalid but not otherwise reinstated for humanitarian reasons or converted to a widow or widower petition;

(iii) The immigrant visa registration is terminated in accordance with section 203(g) of the Act, and has not been

reinstated in accordance with section 203(g) of the Act; or

(iv) The alien, at any time, reenters or attempts to reenter the United States without being inspected and admitted or paroled.

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. 2012–7698 Filed 3–30–12; 8:45 am]

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Federal Register

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Monday, April 2, 2012

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CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

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H.R. 4281/P.L. 112–102
Surface Transportation Extension Act of 2012 (Mar. 30, 2012; 126 Stat. 271)

Last List March 19, 2012

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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which a pear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
April 2	Apr 17	Apr 23	May 2	May 7	May 17	Jun 1	Jul 2
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April 23	May 8	May 14	May 23	May 29	Jun 7	Jun 22	Jul 23
April 24	May 9	May 15	May 24	May 29	Jun 8	Jun 25	Jul 23
April 25	May 10	May 16	May 25	May 30	Jun 11	Jun 25	Jul 24
April 26	May 11	May 17	May 29	May 31	Jun 11	Jun 25	Jul 25
April 27	May 14	May 18	May 29	Jun 1	Jun 11	Jun 26	Jul 26
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