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Washington, DC 20002

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0409; Directorate Identifier 2011–SW–055–AD; Amendment 39–17020; AD 2011–18–52]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are publishing a new airworthiness directive (AD) for certain Agusta S.p.A. (Agusta) Model AB139 and AW139 helicopters that requires establishing a revised life limit for each tail rotor (T/R) blade and updating the helicopter's historical records, repetitively inspecting T/R blades for a crack, and replacing certain T/R blades. This AD is prompted by a fatal accident involving an Agusta Model AW139 helicopter, which may have been caused by cracks in a T/R blade. These actions are intended to detect and prevent a crack in a T/R blade, which could lead to failure of a T/R blade and subsequent loss of control of the helicopter.

DATES: This AD becomes effective May 3, 2012 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–18–52, issued on August 25, 2011, which contained the requirements of this AD.

We must receive comments on this AD by June 18, 2012.

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

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

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

For service information identified in this AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Manager, FAA, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5112; fax: (817) 222–5961; email *jim.grigg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Discussion

On August 26, 2011, we issued Emergency AD No. 2011–18–52 for the Agusta AB139 and AW139 helicopters. The Emergency AD incorrectly lists the effective date as August 26, 2011, when the correct date is August 25, 2011, which is the issue date listed above the signature block. That Emergency AD requires establishing a revised life limit for each T/R blade and updating the helicopter's historical records, repetitively inspecting T/R blades for a crack, and replacing certain T/R blades. That action was prompted by a fatal accident involving an Agusta Model AW139 helicopter, which may have been caused by cracks in a T/R blade. This condition, if not detected and corrected, could result in failure of a T/R blade and subsequent loss of control of the helicopter.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued has issued EASA Emergency AD No. 2011–0156–E, dated August 25, 2011, to correct an unsafe condition for the Agusta Model AB139 and AW139 helicopters. EASA advises that in early 2011, there was a reported occurrence of T/R dynamic ''unbalance'' on a Model AW139 helicopter. Pending the results of the investigation into that occurrence, EASA issued AD No. 2011–0081, dated May 9, 2011, to require, as a precautionary measure, repetitive inspections of the T/R blades. After that AD was issued, a fatal accident occurred with another Model AW139 helicopter on August 19, 2011, possibly caused by cracks in a T/R blade. EASA advises that this condition, if not detected and corrected, could lead to a T/R structural

failure, resulting in loss of control of the helicopter.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in their AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs. This AD contains minor editorial changes but is otherwise consistent with the Emergency AD, and will neither increase to economic burden on any operator nor increase the scope of the Emergency AD.

Related Service Information

Agusta has issued Mandatory Bollettino Tecnico (BT) No. 139–265, dated August 25, 2011 (BT No. 139–265), which supersedes Agusta BT No. 139–251, dated May 6, 2011, for the Model AB139 and AW139 helicopters. The BT specifies, within 25 flight hours and at subsequent intervals of every 25 flight hours thereafter, visually inspecting the T/R blades, part number (P/N) 3G6410A00131 or P/N 4G6410A00131, for a crack or signs of damage using a mirror, magnifying glass (5X or greater), and a ''hand torch'' (flashlight). If there is a crack or signs of damage, the BT specifies sending the damaged blade along with certain data to the manufacturer. In addition, for helicopters with more than 600 flight hours or more than 1,500 landings, whichever occurs first, the BT specifies replacing the T/R blades with blades that have less than 600 flight hours and less than 1,500 landings. The BT specifies sending certain data to the manufacturer regarding the removed T/R blades. EASA classified the BT as mandatory and issued Emergency AD No. 2011–0156–E, dated August 25, 2011, to ensure the continued airworthiness of these helicopters.

AD Requirements

For Agusta Model AB139 and AW139 helicopters with a T/R blade, P/N 3G6410A00131 or 4G6410A00131, this AD requires:

- Within 5 hours time-in-service (TIS), establish a life limit of 600 hours TIS or 1,500 takeoff and landing cycles (cycles), whichever occurs first, on the affected T/R blades and update the helicopter's historical records. If a T/R blade's total number of cycles is unknown, determine the T/R blade cycles by multiplying the T/R blade's hours TIS by 4.
- For a T/R blade that, on the effective date of this AD, has already exceeded 600 hours TIS or 1,500 cycles, within 5 hours TIS replace the T/R blade with an airworthy T/R blade.
- Within 25 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, visually inspect the T/R blade for a crack or damage that exceeds the limits of the applicable maintenance manual. Inspect the T/R blade using a mirror, magnifying glass (5X or greater), and light source; or borescope.
- If there is a crack, or if there is damage that exceeds the limits of the applicable maintenance manual, before further flight, replace the T/R blade with an airworthy T/R blade.

Differences Between This AD and the EASA AD

The AD differs from the EASA AD in that we use the term ''take-off and landing cycles'' and EASA uses the term ''flight cycles.'' In addition, we use the term ''hours time-in-service'' to describe compliance times, and EASA uses ''flight hours''. EASA's AD requires you to contact the manufacturer if there is a crack in a T/R blade, and our AD does not require that action. Finally, our AD requires, within 5 hours TIS, replacing a T/R blade that has exceeded the newly revised life limits. EASA's AD requires replacing the T/R blade within 5 flight hours or 30 days, whichever occurs first.

Interim Action

We consider this AD to be an interim action. If final action is later identified, we might consider further rulemaking.

Costs of Compliance

We estimate that this AD will affect 46 helicopers of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD: each inspection will take 1 work-hour and a blade replacement will take 8 work-hours. Required parts will cost about $35,000 per T/R blade. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $237,050, assuming all T/R blades will require 15 recurring visual inspections, a one-time inspection, and that 5 T/R blades are replaced.

FAA's Justification and Determination of the Effective Date

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the actions previously described are required at the specified intervals, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on August 26, 2011 to all known U.S. owners and operators of Agusta Model AB139 and AW139 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–18–52 AGUSTA S.p.A. (AGUSTA): Amendment 39–17020; Docket No. FAA–2012–0409; Directorate Identifier 2011–SW–055–AD.

(a) Applicability

This AD applies to Agusta Model AB139 and AW139 helicopters, with a tail rotor (T/R) blade, part number (P/N) 3G6410A00131 or P/N 4G6410A00131, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as cracks in a T/R blade. The actions in this AD are intended to detect and prevent a crack in a T/R blade which could lead to failure of a T/R blade and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective May 3, 2012 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–18–52, issued on August 25, 2011, which contained the requirements of this AD.

(d) Compliance

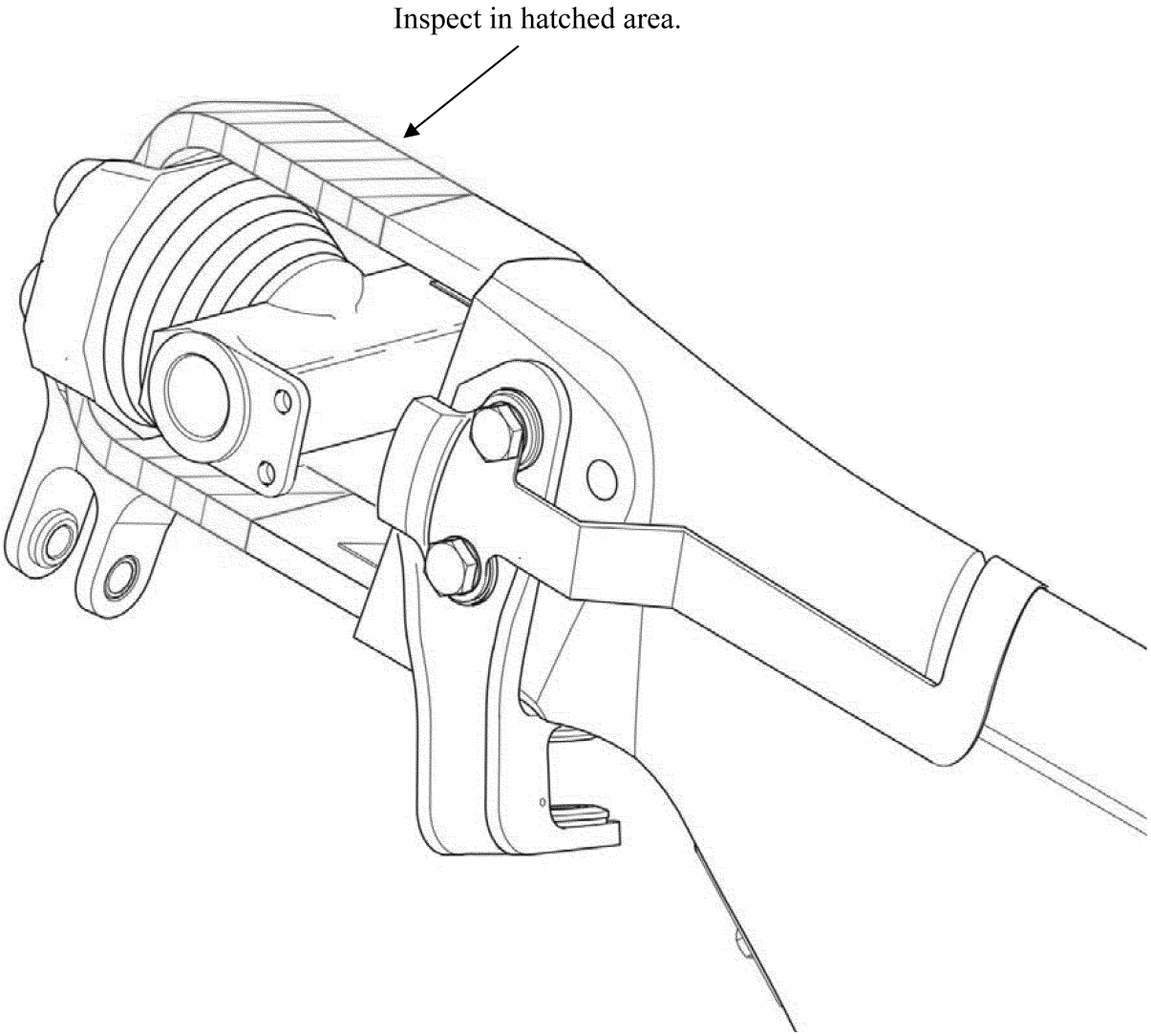
You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 5 hours time-in-service (TIS), establish a life limit of 600 hours TIS or 1,500 takeoff and landing cycles (cycles), whichever occurs first, on the affected T/R blades and update the helicopter's historical records. If a T/R blade's total number of cycles is unknown, determine the T/R blade cycles by multiplying the T/R blade's hours TIS by 4.

(2) For a T/R blade that, on the effective date of this AD, has already exceeded 600 hours TIS or 1,500 cycles, within 5 hours TIS replace the T/R blade with an airworthy T/R blade.

(3) Within 25 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, visually inspect the T/R blade for a crack or damage that exceeds the limits of the applicable maintenance manual. Inspect in the area depicted in the following figure using a mirror, magnifying glass (5X or greater), and light source, or borescope.



(4) If there is a crack, or if there is damage that exceeds the limits of the applicable maintenance manual, before further flight, replace the T/R blade with an airworthy T/R blade.

(5) This AD revises the Airworthiness Limitations section of the maintenance manual by reducing the life limit of the T/R blade to 600 hours TIS or 1,500 cycles.

(f) Special Flight Permits

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished provided that there is minimal flight crew and there are no passengers.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Jim Grigg, Manager, FAA, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5112; fax: (817) 222–5961; email *jim.grigg@faa.gov.*

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

(h) Additional Information

(1) Agusta Mandatory Bollettino Tecnico No. 139–265, dated August 25, 2011, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39 0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency (Italy) AD No. 2011–0156–E, dated August 25, 2011.

(i) Subject

The Joint Aircraft Service Component (JASC) Code is: 6410: Tail Rotor Blade.

Issued in Fort Worth, Texas, on April 10, 2012.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–9315 Filed 4–17–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0654; Airspace Docket No. 11–AWP–8]

RIN 2120–AA66

Modification of VOR Federal Airways V–135 and V–137; Southwest United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies VHF omnidirectional range (VOR) Federal airways V–135 and V–137 by extending the airways to the Mexicali, Mexico VOR/DME. This action enhances navigation and air traffic control coordination for aircraft proceeding across the United States—Mexican border.

DATES: Effective date 0901 UTC, May 31, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On December 21, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify V–135 and V–137 in the southwest United States (76 FR 79140). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. Five comments were received.

Two commenters expressed support for the proposal. Three commenters objected to the decommissioning of VORs in the United States. This rule does not involve the decommissioning of any VORs; therefore these comments are outside the scope of this action. However, the comments concerning VORs have been forwarded to the FAA Navigation Services Group for review.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to extend two existing VOR Federal airways to the Mexicali, Mexico VOR/DME. V–135 is amended by adding a segment between the Mexicali VOR/DME and the Bard, AZ, VORTAC. V–137 is amended by adding a segment between the Mexicali VOR/DME and the Imperial, CA, VORTAC. These amendments benefit cross-border navigation. Additionally, fixes are established at the border crossing points to simplify the control coordination of flights between air traffic control facilities.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9V signed August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The VOR Federal Airways listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies VOR Federal airways to enhance the efficiency of the National Airspace System in the southwest United States. Except for editorial changes, this rulemaking is the same as published in the NPRM of December 21, 2011.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR federal airways

* * * * *

V–135 [Amended]

From Mexicali, Mexico; VIA Bard, AZ; Blythe, CA; Parker, CA; Needles, CA; Goffs, CA; Beatty, NV; INT Beatty 326° and Tonopah, NV, 223° radials; to Tonopah. The airspace within R–4807 and the airspace within Mexico is excluded.

V–137 [Amended]

From Mexicali, Mexico; via Imperial, CA; INT Imperial 350° and Thermal, CA 144° radials; Palm Springs, CA; Palmdale, CA; Gorman, CA; Avenal, CA; Priest, CA; Salinas, CA. The airspace within Mexico is excluded.

Issued in Washington, DC, on April 10, 2012.

Gary A. Norek,

Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–9188 Filed 4–17–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1386; Airspace Docket No. 11–ANE–11]

RIN 2120–AA66

Modification, Revocation and Establishment of Air Traffic Service Routes; Windsor Locks Area; CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on April 5, 2012, that amends the airway structure in the vicinity of Windsor Locks, CT, due to the planned decommissioning of the Bradley VHF omnirange/tactical air navigation aid. This action corrects the longitude coordinate for one point in the description of area navigation (RNAV) route T–300.

DATES: Effective date 0901 UTC, May 31, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 2012, the FAA published a final rule in the **Federal Register** amending four VOR Federal airways, revoking one VOR Federal airway, and establishing three area navigation (RNAV) routes in the vicinity of Windsor Locks, CT (77 FR 20528). Subsequent to publication, an error was discovered in the longitude coordinate for the Norwich, CT, VOR/DME navigation aid in the description of RNAV route T–300. The published longitude of 72°59′58″ W. should read 71°59′58″ W.

Area Navigation Routes are published in paragraph 6011 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be published subsequently in the Order.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the longitude coordinate for the Norwich, CT VOR/DME as published in the **Federal Register** on April 5, 2010 (77 FR 20528) (FR Doc. 2012–8183) for RNAV route T–300, is corrected under the description as follows:

Paragraph 6011 United States area navigation routes

* * * * *

T–300 [Corrected]

■ On page 20530, line 30, remove ''Norwich, CT (ORW) VOR/DME (lat. 41°33′23″ N., long. 72°59′58″ W.)'' and insert ''Norwich, CT (ORW) VOR/DME (lat. 41°33′23″ N., long. 71°59′58″ W.)

Issued in Washington, DC, on April 12, 2012.

Ellen Crum,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–9187 Filed 4–17–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 111027661–1743–01]

RIN 0694–AF43

Addition of Certain Persons on the Entity List: Addition of Persons Acting Contrary to the National Security or Foreign Policy Interests of the United States

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding three persons to the Entity List. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed on the Entity List under the following two destinations: Canada and Jordan.

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security and that availability of license exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective April 18, 2012.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, when appropriate, the Treasury, makes all decisions regarding additions to, removals from or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add three persons to the Entity List on the basis of Section 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The three entries added to the Entity List consist of two persons in Canada and one person in Jordan.

The ERC reviewed Section 744.11(b) (Criteria for revising the Entity List) in making the determination to add these persons to the Entity List. Under that paragraph, persons for which there is reasonable cause to believe, based on specific and articulable facts, that the persons have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List pursuant to Section 744.11. Paragraphs (b)(1)–(b)(5) of Section 744.11 include an illustrative list of activities that could be contrary

to the national security or foreign policy interests of the United States. The three persons are believed to have been involved in activities described under paragraphs (b)(1) and (b)(5) of Section 744.11.

The three persons in Canada and Jordan being added to the Entity List under this rule have been determined by the ERC to be involved in activities that could be contrary to the national security or foreign policy interests of the United States. Examples of the specific activities these persons have been involved with that are contrary to the national security or foreign policy interests of the United States pursuant to Section 744.11 include the violation of the license requirements imposed for exports and reexports to Syria as specified in Section 746.9 (formerly General Order No. 2 of Supplement No. 1 to part 736 of the EAR), and violation of the embargo against Iran as specified in the Iran Transactions Regulations (31 CFR Part 560). Both Syria and Iran have been designated by the Secretary of State as countries that have repeatedly provided support for acts of international terrorism. The three persons that are being added to the Entity List are knowingly and willfully engaging in the transshipment of U.S.-origin equipment subject to the EAR, without the required Department of Commerce or Department of the Treasury, Office of Foreign Assets Control (OFAC) export licenses, for use in Syria and Iran.

For the three persons added to the Entity List, the ERC specifies a license requirement for all items subject to the EAR and establishes a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to such persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to those persons being added to the Entity List.

This final rule adds the following three persons under three entries to the Entity List:

Canada

(1) *Abou El-Khir Al Joundi,* a.k.a., the following six aliases:

—Abou El Kheir Joundi;
—Abou Elkhir Al Joundi;
—Abou Joundi Et Kheir;
—Al Joundi;
—Al Jundi; *and*
—Elkheir Aljoundi Abou.

2706 Carre Denise Pelletier, Montreal, Quebec, H4R 2T5 Canada; *and*

(2) *Canada Lab Instruments,* a.k.a., the following alias:

—SCO North America.

5995 Gouin Ouest, #212, Montreal, Quebec, H4J 2P8 Canada.

Jordan

(1) *Masound Est. for Medical and Scientific Supplies,* 74 First Floor, Tla'a Al Ali Khali Al Salim Street, Amman, Jordon 11118.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on April 18, 2012, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List once a final rule was published it would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States and/or to take steps to set up additional aliases, change addresses and take other steps to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

List of Subject in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

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

PART 744—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of September 21, 2011, 76 FR 59001 (September, 22, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011); Notice of January 19, 2012, 77 FR 3067 (January 20, 2012).

■ 2. Supplement No. 4 to part 744 is amended:

■ (a) By adding under Canada, in alphabetical order, two Canadian entities; and

■ (b) By adding, in alphabetical order, the destination of Jordan under the Country column and one Jordanian entity.

The additions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	*	* *	*
CANADA	Abou El-Khir Al Joundi, a.k.a., the following six aliases: —Abou El Kheir Joundi; —Abou Elkhir Al Joundi; —Abou Joundi Et Kheir; —Al Joundi; —Al Jundi; *and* —Elkheir Aljoundi Abou. 2706 Carre Denise Pelletier, Montreal, Quebec, H4R 2T5 Canada.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial ..	77 FR [INSERT FR PAGE NUMBER] 4/18/12.
*	* *	*	* *	*
	Canada Lab Instruments, a.k.a., the following alias: SCO North America. 5995 Gouin Ouest, #212, Montreal, Quebec, H4J 2P8 Canada.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial ..	77 FR [INSERT FR PAGE NUMBER] 4/18/12.
*	* *	*	* *	*
JORDAN	Masound Est. for Medical and Scientific Supplies,74 First Floor, Tla'a Al Ali Khali Al Salim Street, Amman, Jordon 11118.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial ..	77 FR [INSERT FR PAGE NUMBER] 4/18/12.
*	* *	*	* *	*

Dated: April 12, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–9374 Filed 4–17–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 009–2012]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final Rule.

SUMMARY: The Department of Justice (DOJ or Department) is issuing a final rule for a new Department-wide Privacy Act system of records entitled, Debt Collection Enforcement System, JUSTICE/DOJ–016. The Department is exempting the Debt Collection Enforcement System, JUSTICE/DOJ–016, pursuant to 5 U.S.C. 552a(j) and (k) from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f) and (g) of the Privacy Act for the reasons set forth in the following text. Information in this system of records relates to matters of law enforcement efforts associated with debt collection purposes, and certain records in this system are exempt from certain provisions of the Privacy Act in order to avoid interference with such law enforcement functions and responsibilities of the DOJ.

DATES: *Effective Date:* April 18, 2012.

FOR FURTHER INFORMATION CONTACT: Holley B. O'Brien, Director, Debt Collection Management Staff, Justice Management Division, Department of Justice, at (202) 514–5343.

SUPPLEMENTARY INFORMATION: Notice of the proposed rule with invitations to comment was published on February 21, 2012, at 77 FR 9878. The Department received one comment from a member of the public regarding exemption from the access provisions of the Privacy Act. The Department accepted the comment but has declined to adopt the comment because the system of records is validly exempt from the access provisions of the Privacy Act for the reasons set forth below. In addition, the Department is making minor stylistic changes to the authority cited for Part 16.134 to reflect only the authority for the proposed rule, which is 5 U.S.C. 552a. Further, the Department is making a minor stylistic change to Part 16.134(a) by adding the

phrase ''pursuant to 5 U.S.C. 552a(j)(2)'' after the phrase ''[t]he following system of records is exempt'' to clarify the statutory reason for the exemption.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, 28 CFR part 16 is amended as follows:

PART 16—[AMENDED]

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

Subpart E—Exemption of Records Systems Under the Privacy Act

■ 2. Section 16.134 is added to subpart E to read as follows:

§ 16.134 Exemption of Debt Collection Enforcement System, Justice/DOJ–016.

(a) The following system of records is exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f) and (g) of the Privacy Act. In addition, the system is exempt pursuant to 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d)(1), (2), (3), and (4); (e)(1); (4)(G), (H), and (I); and (f). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) or (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system, or the overall law enforcement process, the applicable exemption may be waived by the DOJ in its sole discretion.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because certain records in this system are exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any investigative interest in the individual. Revealing this information may thus compromise ongoing law enforcement efforts. Revealing this information may also permit the record subject to take measures to impede the investigation, such as destroying evidence, intimidating potential witnesses or fleeing the area to avoid the investigation.

(2) From subsection (c)(4) notification requirements because certain records in this system are exempt from the access and amendment provisions of subsection (d) as well as the access to accounting of disclosures provision of subsection (c)(3).

(3) From subsections (d)(1), (2), (3), and (4) because access to the records contained in this system might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing debt collection investigations or other law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement purposes.

(5) From subsection (e)(2) to avoid impeding law enforcement efforts associated with debt collection by putting the subject of an investigation on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that investigation.

(6) From subsection (e)(3) to avoid impeding law enforcement efforts in conjunction with debt collection by putting the subject of an investigation on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that investigation.

(7) From subsection (e)(4)(G), (H) and (I) because portions of this system are exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (e)(5) because many of the records in this system are records contributed by other agencies and the restrictions imposed by (e)(5) would limit the utility of the system.

(9) From subsection (e)(8), because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the DOJ and may alert the subjects of law enforcement investigations, who might be otherwise unaware, to the fact of those investigations.

(10) From subsections (f) and (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: April 5, 2012.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer, United States Department of Justice.

[FR Doc. 2012–9001 Filed 4–17–12; 8:45 am]

BILLING CODE 4410–CN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Rigging Equipment for Material Handling Construction Standard; Correction and Technical Amendment

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

ACTION: Final rule; correction and technical amendment.

SUMMARY: OSHA is correcting its sling standard for construction titled ''Rigging Equipment for Material Handling'' by removing the rated capacity tables and making minor, nonsubstantive revisions to the regulatory text.

DATES: The effective date for the corrections and technical amendment to the standards is April 18, 2012.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Frank Meilinger, Director, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999.

General and technical information: Kenneth Stevanus, OSHA Office of Engineering Safety, OSHA, Room N–3621, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2260.

SUPPLEMENTARY INFORMATION:

Background

In OSHA's Standards Improvement Project-Phase III final rule, published on June 8, 2011, the Agency stated that it was amending its standards regulating slings for general industry, shipyard employment, and construction by removing outdated tables that specify safe working loads, and revising other provisions that referenced the outdated tables (see 76 FR at 33591 and 33597). To replace these tables, OSHA added requirements that prohibit employers from loading slings in excess of the recommended safe working load prescribed on identification markings located on, or attached to, each sling; these requirements also prohibit the use

of slings that do not have such markings.

While OSHA removed the load-capacity tables for slings from § 1910.184 (general industry; tables N–184–1, and N–184–3 through N–184–22) and § 1915.118 (shipyard employment; tables G–1 through G–5, G–7 through G–8, and G–10), including references to these tables in § 1915.112 and § 1915.113, the Agency failed to include in the regulatory text provisions to remove the tables in § 1926.251 (construction; tables H–1, and H–3 through H–19), and redesignate Table H–2 to H–1 and Table H–20 to H–2. This notice, therefore, amends § 1926.251 by removing most of the existing tables (H–1, and H–3 through H–19), redesignating Table H–2 as Table H–1 and Table H–20 as Table H–2, and revising paragraphs (b)(5) and (c)(5) to indicate the new table number.

List of Subjects in 29 CFR Part 1926

Occupational safety and health, Construction, Shackles, Slings.

Authority and Signature

David Michaels, MPH, Ph.D., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this document. Accordingly, pursuant to Section 6 of 29 U.S.C. 655, Section 4 of 5 U.S.C. 553, Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR 1911.5.

Signed at Washington, DC, on April 9, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, OSHA is amending 29 CFR part 1926 by making the following corrections and technical amendments:

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart H—Materials Handling, Storage, Use, and Disposal

■ 1. Revise the authority citation for subpart H to read as follows:

Authority: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable. Section 1926.250 also issued under 29 CFR part 1911.

■ 2. Amend § 1926.251 as follows:

■ a. Revise paragraph (b)(5) and (c)(5) introductory text;

■ b. Add a reserved paragraph (c)(5)(ii);

■ c. Remove Tables H–1 and H–3 through H–19; and

■ d. Redesignate Table H–2 as Table H–1 and Table H–20 as Table H–2.

The revisions read as follows:

§ 1926.251 Rigging equipment for material handling.

* * * * *

(b) * * *

(5) Whenever wear at any point of any chain link exceeds that shown in Table H–1, the assembly shall be removed from service.

* * * * *

(c) * * *

(5) When U-bolt wire rope clips are used to form eyes, Table H–2 shall be used to determine the number and spacing of clips.

* * * * *

[FR Doc. 2012–8881 Filed 4–17–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0249]

Annual Marine Events in the Eighth Coast Guard District, Blessing of the Fleet; Bayou La Batre; Bayou La Batre, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Special Local Regulations for the Blessing of the Fleet in Bayou La Batre, AL from 2 p.m. until 4 p.m. on May 6, 2012. This action is necessary for the safety of participants and spectators, including all crews, vessels, and persons on navigable waters during the Blessing of the Fleet, Bayou La Batre. During the enforcement period, entry into, transiting or anchoring in the regulated area is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port (COTP) Mobile or the designated Coast Guard Patrol Commander.

DATES: The regulations in 33 CFR 100.801 will be enforced from 2 p.m. until 4 p.m. on May 6, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–5940 or email *Lenell.J.Carson@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Special Local Regulations for the annual Blessing of the Fleet, Bayou La Batre event listed in 33 CFR 100.801 (Table 1, VII. Sector Mobile, #158) on May 6, 2012 from 2 p.m. until 4 p.m.

Under the provisions of 33 CFR 100.801, all persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state or local law enforcement and sponsor provided vessels assigned or approved by the Commander, Eighth Coast Guard District, to patrol the event. Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at slowest safe speed in a manner which will not endanger participants in the event or any other craft. No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel. The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property. The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

This notice is issued under authority of 33 CFR 100.35, 33 U.S.C. 1233, and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and Marine Information Broadcasts.

If the Captain of the Port Mobile or Patrol Commander determines that the regulated area need not be enforced for the full duration stated in this notice of enforcement, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: March 27, 2012.

D.J. Rose,

Captain, U.S. Coast Guard, Captain of the Port Mobile.

[FR Doc. 2012–9361 Filed 4–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0247]

Annual Marine Events in the Eighth Coast Guard District, Smoking the Sound; Biloxi Ship Channel; Biloxi, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Special Local Regulations for the Smoking the Sound boat races in the Biloxi Ship Channel, Biloxi, MS from 8 a.m. until 6 p.m. on April 28 and April 29, 2012. This action is necessary for the safeguard of participants and spectators, including all crews, vessels, and persons on navigable waters during the Smoking the Sound boat races. During the enforcement period, entry into, transiting or anchoring in the regulated area is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port (COTP) Mobile or the designated Coast Guard Patrol Commander.

DATES: The regulations in 33 CFR 100.801 will be enforced from 8 a.m. until 6 p.m. on April 28 and April 29, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–5940 or email *Lenell.J.Carson@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Special Local Regulations for the annual Smoking the Sound event listed in 33 CFR 100.801 (Table 1, VII. Sector Mobile, #154) on April 28 and 29, 2012 from 8 a.m. until 6 p.m.

Under the provisions of 33 CFR 100.801, all persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state or local law enforcement and sponsor provided vessels assigned or approved by the Commander, Eighth Coast Guard District, to patrol the event. Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at slowest safe speed in a manner which will not endanger participants in the event or any other craft. No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel. The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property. The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

This notice is issued under authority of 33 CFR 100.35, 33 U.S.C. 1233, and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and Marine Information Broadcasts.

If the Captain of the Port Mobile or Patrol Commander determines that the regulated area need not be enforced for the full duration stated in this notice of enforcement, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: March 27, 2012.

D.J. Rose,

Captain, U.S. Coast Guard, Captain of the Port Mobile.

[FR Doc. 2012–9381 Filed 4–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0248]

Annual Marine Events in the Eighth Coast Guard District, Dauphin Island Race; Mobile Bay; Mobile, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Special Local Regulations for the Dauphin Island Race in the Mobile Bay, Mobile, AL from 9 a.m. until 5 p.m. on April 28, 2012. This action is necessary for the safeguard of participants and spectators, including all crews, vessels, and persons on navigable waters during the Dauphin Island Race. During the enforcement period, entry into, transiting or anchoring in the regulated area is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port (COTP) Mobile or the designated Coast Guard Patrol Commander.

DATES: The regulations in 33 CFR 100.801 will be enforced from 9 a.m. until 5 p.m. on April 28, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–5940 or email *Lenell.J.Carson@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Special Local Regulations for the annual Dauphin Island Race event listed in 33 CFR 100.801 (Table 1, VII. Sector Mobile, #150) on April 28, 2012 from 9 a.m. until 5 p.m.

Under the provisions of 33 CFR 100.801, all persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state or local law enforcement and sponsor provided vessels assigned or approved by the Commander, Eighth Coast Guard District, to patrol the event. Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at slowest safe speed in a manner which will not endanger participants in the event or any other

craft. No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel. The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property. The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

This notice is issued under authority of 33 CFR 100.35, 33 U.S.C. 1233, and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and Marine Information Broadcasts.

If the Captain of the Port Mobile or Patrol Commander determines that the regulated area need not be enforced for the full duration stated in this notice of enforcement, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: March 27, 2012.

D.J. Rose,

Captain, U.S. Coast Guard, Captain of the Port Mobile.

[FR Doc. 2012–9377 Filed 4–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0258]

National Maritime Week Tugboat Races, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Special Local Regulation for the annual National Maritime Week Tugboat Races in Elliott Bay, WA from 12 p.m. through 4:30 p.m. on May 12, 2012. This action is necessary to ensure the safety of all participants and spectators from the inherent dangers associated with these types of races which includes large wakes. During the enforcement period, no person or vessel may enter or remain in the regulated area except for participants in the event, supporting personnel, vessels registered with the event organizer, and personnel or vessels authorized by the Coast Guard Patrol Commander.

DATES: The regulations in 33 CFR 100.1306 will be enforced from 12 p.m. through 4:30 p.m. on May 12, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Ensign Nathaniel P. Clinger, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6045, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Special Local Regulation for the annual National Maritime Week Tugboat Races, Seattle, WA in 33 CFR 100.1306 on May 12, 2012 from 12 p.m. through 4:30 p.m. This regulation can be found in the April 27, 1996 issue of the **Federal Register** (61 FR 16710).

A regulated area is established on that portion of Elliott Bay along the Seattle waterfront in Puget Sound bounded by a line beginning at: 47°37′36″ N, 122°22′42″ W; thence to 47°37′24.5″ N, 122°22′58.5″ W; thence to 47°36′08″ N, 122°20′53″ W; thence to 47°36′21″ N, 122°20′31″ W; thence returning to the origin. This regulated area resembles a rectangle measuring approximately 3,900 yards along the shoreline between Pier 57 and Pier 89, and extending approximately 650 yards into Elliott Bay. Temporary floating markers will be placed by the race sponsors to delineate the regulated area. [Datum: NAD 1983]

No person or vessel may enter or remain in the regulated area except for participants in the event, supporting personnel, vessels registered with the event organizer, and personnel or vessels authorized by the Coast Guard Patrol Commander.

The Coast Guard will establish a patrol consisting of active and auxiliary Coast Guard vessels and personnel in the regulated area described above. The patrol shall be under the direction of a Coast Guard officer or petty officer designated by the Captain of the Port as the Coast Guard Patrol Commander. The Patrol Commander may forbid and control the movement of vessels in this regulated area.

A succession of sharp, short blasts from whistle or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1306 and 5 U.S.C. 552(a).

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: April 6, 2012.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2012–9380 Filed 4–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0252]

RIN 1625–AA08

Special Local Regulations; Lowcountry Splash Open Water Swim, Wando River and Cooper River, Mount Pleasant, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of the Wando River and Cooper River in Mount Pleasant, South Carolina during the Lowcountry Splash, a 2.4 mile open water swim. The event is scheduled to take place on Saturday, May 19, 2012. Approximately 600 people are expected to participate in the swim. These special local regulations are necessary to provide for the safety of life on navigable waters of the United States during the event. The special local regulations establish a series of moving buffer zones, where all persons and vessels, except those persons and vessels participating in the open water swim, are prohibited from entering, transiting through, anchoring in, or remaining unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from 7:30 a.m. until 10 a.m. on May 19, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0252 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0252 in the ''Search'' 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 Ensign John Santorum, Sector Charleston Waterways Management Division, Coast Guard; telephone (843) 740–3184, email *John.R. Santorum@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

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information about the event until March 22, 2012. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to swimmers, participant vessels, spectators, and the general public.

Basis and Purpose

The legal basis for the 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 on navigable waters of the United States during the Lowcountry Splash open water swim.

Discussion of Rule

On Saturday, May 19, 2012, the Logan Rutledge Children's Foundation will host the Lowcountry Splash, a 2.4 mile open water swim in the Wando River and Cooper River along the shoreline of Mount Pleasant, South Carolina. The Lowcountry Splash starts at Hobcaw Yacht Club on the Wando River, and finishes at the Charleston Harbor Marina and Resorts at Patriots Point on the Cooper River. Approximately 600 swimmers will be participating in the swim. Buoys will mark the course, and the course will be patrolled by event staff and volunteers on safety vessels: 20 motorboats, 20 kayaks, and several jet skis.

The special local regulations establish a series of buffer zones around the Lowcountry Splash swimmers and safety vessels on certain waters of the Wando River and Cooper River in Mount Pleasant, South Carolina. These buffer zones are as follows: (1) All waters within 75 yards of the lead safety vessel; (2) all waters within 100 yards of the last safety vessel; and (3) all waters within 100 yards of the swimmers and each participating safety vessel. The special local regulations will be enforced from 7:30 a.m. until 10 a.m. on May 19, 2012.

Persons and vessels not participating in the open water swim are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zones unless authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the buffer zones may contact the Captain of the Port Charleston by telephone at (843) 740–7050, 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 buffer zones is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the buffer zones by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

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

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 buffer zones will be enforced for only two and a half hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the buffer zones without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the buffer zones if authorized by the Captain of the Port Charleston or a designated representative; and (4) the Coast Guard will provide advance notification of the buffer zones to the local maritime community by 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 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 the waters of the Wando River and Cooper

River in Mount Pleasant, South Carolina encompassed within the regulated areas from 7:30 a.m. until 10 a.m. on May 19, 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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can 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.

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

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)(h), of the Instruction. This rule involves 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 § 100.35T07–0252 to read as follows:

§ 100.35T07–0252 Special Local Regulations; Lowcountry Splash Open Water Swim, Wando River and Cooper River, Mount Pleasant, SC.

(a) *Regulated Areas.* The following buffer zones are regulated areas: All waters within 75 yards of the lead safety vessel; all waters within 100 yards of the last safety vessel; and all waters within 100 yards of the swimmers and each participating vessel. The Lowcountry Splash, a 2.4 mile open water swim, starts at Hobcaw Yacht Club on the Wando River, in approximate position 32°49′19″ N, 79°53′48″ W, and finishes at the

Charleston Harbor Marina and Resorts at Patriots Point on the Cooper River, in approximate position 32°47′11″ N, 79°54′38″ W. All coordinates are North American Datum 1983.

(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 Charleston in the enforcement of the regulated areas.

(c) *Regulations.*

(1) Except for those persons and vessels participating in the open water swim, 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 Charleston 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 Charleston by telephone at (843) 740–7050, 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 Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 7:30 a.m. until 10 a.m. on May 19, 2012.

Dated: April 9, 2012.

M.F. White, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2012–9373 Filed 4–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0168]

RIN 1625–AA08

Special Local Regulation; Smokin The Lake; Gulfport Lake; Gulfport, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for a portion of Gulfport Lake in Gulfport, MS. This action is necessary for the safeguard of participants and spectators, including all crews, vessels, and persons on navigable waters during the Smokin The Lake high speed boat races on May 5 and 6, 2012. Entry into, transiting or anchoring in this area is prohibited to all vessels not registered with the sponsor as participants or not part of the regatta patrol, unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: This rule is effective and enforceable with actual notice from 10 a.m. until 6 p.m. on May 5, 2012 and May 6, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0168 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0168 in the ''Search'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and U.S. Coast Guard Sector Mobile (spw), Building 102, Brookley Complex, South Broad Street, Mobile, AL 36615, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–5940 or email *Lenell.J.Carson@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

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' This rule provides proper notice; however, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) which would provide a comment period with respect to this rule. The Coast Guard received an application for a Marine Event Permit on February 27, 2012 confirming that this year's occurrence of this annual event would take place on May 5, 2012 and May 6, 2012. After reviewing the details of the event and the permit application, the Coast Guard determined that a special local regulation is needed and delaying or foregoing this safety measure would be contrary to the public interest. Additionally, this special local regulation is part of a separate rulemaking updating the current list of annually recurring events under docket number USCG–2011–0286. That rulemaking published March 1, 2012 in the **Federal Register** (77 FR 12456) provided a comment period before becoming a permanent final rule. No comments were received in that docket related to this event.

The special local regulation is needed to safeguard persons and vessels from safety hazards associated with the Smokin The Lake high speed boat races.

Basis and Purpose

On February 27, 2012, Smokin The Lake applied for a Marine Event Permit to conduct high speed boat races on Gulfport Lake, Gulfport, MS on May 5, 2012 and May 6, 2012. This event will draw in a large number of pleasure craft and the high speed boats pose a significant safety hazard to both vessels and mariners operating in or near the area. The COTP Mobile is establishing a temporary special local regulation for a portion of Gulfport Lake, Gulfport, MS to safeguard persons and vessels during the high speed boat races.

The COTP anticipates minimal impact on vessel traffic due to this regulation. However, this special local regulation is deemed necessary for the safeguard of life and property within the COTP Mobile zone.

Discussion of Rule

The Coast Guard is establishing a temporary special local regulation for Gulfport Lake, Gulfport, MS to include all waters between an eastern boundary represented by positions 30°25′36″ N, 089°03′08″ W to 30°25′26″ N, 089°03′08″ W, and a western boundary represented by positions 30°25′32″ N, 089°03′59″ W to 30°25′26″ N, 089°03′59″ W. This temporary rule will safeguard life and property in this area. Entry into, transiting or anchoring in this zone is prohibited to all vessels not registered with the sponsor as participants or not part of the regatta patrol, unless specifically authorized by the COTP Mobile or a designated representative. They may be contacted on VHF–FM Channel 16 or through Coast Guard Sector Mobile at 251–441–5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period for the special local regulation. This rule is effective from 10 a.m. until 6 p.m. on May 5, 2012 and May 6, 2012.

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, 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.

The special local regulation listed in this rule will only restrict vessel traffic from entering, transiting, or anchoring within Gulfport Lake, Gulfport, MS. The effect of this regulation will not be significant for several reasons: (1) This rule will only affect vessel traffic for a short duration; (2) vessels may request permission from the COTP to transit through the regulated area; and (3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through broadcast notice to mariners. These notifications will allow the public to plan operations around the regulated area.

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 will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in affected portions of Gulfport Lake during the high speed boat races. This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the regulated area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can 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 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.

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

Taking of Private Property

This rule will not affect 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

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

Technical Standards

This rule does not use technical standards. Therefore, we did not

consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves establishing a special local regulation, requiring a permit wherein an analysis of the environmental impact of the regulations was performed. 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 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 § 100.35T08–0168 to read as follows:

§ 100.35T08–0168 Special Local Regulation; Gulfport Lake; Gulfport, MS.

(a) *Regulated Area.* The following area is a regulated area: Gulfport Lake, Gulfport, MS to include all waters between an eastern boundary represented by positions 30°25′36″ N, 089°03′08″ W to 30°25′26″ N, 089°03′08″ W, and a western boundary represented by positions 30°25′32″ N, 089°03′59″ W to 30°25′26″ N, 089°03′59″ W.

(b) *Enforcement dates.* This rule will be enforced from 10 a.m. until 6 p.m. on May 5, 2012 and May 6, 2012.

(c) *Special Local Regulations.*

(1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''.

(2) All Persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the Captain of the Port Mobile to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

(4) No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) The patrol commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and vessels must remain moored through the duration of the event.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special local regulations at the conclusion of the event.

(d) *Informational Broadcasts.* The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: March 27, 2012.

D.J. Rose,

Captain, U.S. Coast Guard, Captain of the Port Mobile.

[FR Doc. 2012–9389 Filed 4–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0218]

RIN 1625–AA08

Special Local Regulation; Tuscaloosa Dragon Boat Race; Black Warrior River; Tuscaloosa, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for a portion of the Black Warrior River, from mile 340.5 to mile 341.0, Tuscaloosa, AL. This action is necessary for the safeguard of participants and spectators, including all crews, vessels, and persons on navigable waters during the Jr. League of Tuscaloosa Dragon Boat Races. Entry into, transiting or anchoring in this area is prohibited to all vessels not registered with the sponsor as participants or not part of the regatta patrol, unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: This rule is effective and enforceable with actual notice from 11 a.m. until 4 p.m. on April 28, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0218 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0218 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and U.S. Coast Guard Sector Mobile (spw), Building 102, Brookley Complex South Broad Street Mobile, AL 36615, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–5940 or email *Lenell.J.Carson@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

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is insufficient time to publish a NPRM. The Coast Guard received an application for a Marine Event Permit on March 2, 2012 from the Junior League of Tuscaloosa to conduct their event on April 28, 2012. After reviewing the details of the event and the permit application, the Coast Guard determined that a special local regulation is needed and delaying or foregoing this safety measure would be contrary to the public interest. The special local regulation is needed to safeguard persons and vessels from safety hazards associated with the Jr. League of Tuscaloosa Dragon Boat Races. This event is advertised as scheduled and participants, sponsors and spectators have planned for the event. It would be impracticable and unnecessary to reschedule the planned and advertised event in order to complete the NPRM process.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days notice before the effective date after publication in the **Federal Register**. The Coast Guard received an application for a Marine Event Permit on March 2, 2012 from the Junior League of Tuscaloosa to conduct their event on April 28, 2012. Delaying the effective date would be impracticable and would unnecessarily delay the event. Immediate action is needed to protect persons and vessels from safety hazards associated with the Jr. League of Tuscaloosa Dragon Boat Races.

Basis and Purpose

The Junior League of Tuscaloosa is sponsoring a Dragon Boat Race on the Black Warrior River. The introduction of Dragon Boats into a commercially transited river system poses significant safety hazards to both the Dragon Boat racers and the commercial vessels. The COTP Mobile is establishing a temporary special local regulation for a portion of the Black Warrior River, Tuscaloosa, AL, to safeguard persons and vessels during the Dragon Boat races.

The COTP anticipates minimal impact on vessel traffic due to this regulation. However, this special local regulation is deemed necessary to safeguard life and property within the COTP Mobile zone.

Discussion of Rule

The Coast Guard is establishing a temporary special local regulation for a portion of the Black Warrior River from mile 340.5 to mile 341.0, Tuscaloosa, AL. This temporary rule will safeguard life and property in this area. Entry into, transiting or anchoring in this zone is prohibited to all vessels not registered with the sponsor as participants or not part of the regatta patrol, unless specifically authorized by the COTP Mobile or a designated representative. They may be contacted on VHF–FM Channel 16 or through Coast Guard Sector Mobile at 251–441–5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period for the special local regulation. This rule is effective from 11 a.m. until 4 p.m. on April 28, 2012.

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 special local regulation listed in this rule will only restrict vessel traffic from entering, transiting, or anchoring within a small portion of the Black Warrior River, Tuscaloosa, AL. The effect of this regulation will not be significant for several reasons: (1) This rule will only affect vessel traffic for a short duration; (2) vessels may request permission from the COTP to transit through the regulated area; and (3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through broadcast notice to mariners. These notifications will allow the public to plan operations around the regulated area.

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 will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in affected portions of the Black Warrior River, Tuscaloosa, AL during the Dragon Boat Races. This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the regulated area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can 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 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.

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect 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

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

Technical Standards

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves establishing a special local regulation, requiring a permit wherein an analysis of the environmental impact of the regulations was performed. 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 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 § 100.35T08–0218 to read as follows:

§ 100.35T08–0218 Special Local Regulation; Black Warrior River; Tuscaloosa, AL.

(a) *Regulated Area.* The following area is a regulated area: A portion of the Black Warrior River, from mile 340.5 to mile 341, Tuscaloosa, AL.

(b) *Enforcement dates.* This rule will be enforced from 11 a.m. until 4 p.m. on April 28, 2012.

(c) *Special Local Regulations.*

(1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''.

(2) All Persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the Captain of the Port Mobile to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

(4) No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) The patrol commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special local regulations at the conclusion of the event.

(d) *Informational Broadcasts.* The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of

the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: March 27, 2012.

D.J. Rose,

Captain, U.S. Coast Guard, Captain of the Port Mobile.

[FR Doc. 2012–9375 Filed 4–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 20

RIN 2900–AO43

Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans' Appeals; Repeal of Prior Rule Change

AGENCY: Department of Veterans Affairs.

ACTION: Direct final rule.

SUMMARY: The Department of Veterans Affairs (VA) is taking final action to amend its hearing regulations to repeal a prior amendment that specified that the provisions regarding hearings before the Agency of Original Jurisdiction (AOJ) do not apply to hearings before the Board of Veterans' Appeals (Board). This action is being taken because of VA's decision that the prior amendment should have followed the notice-and-comment procedure of the Administrative Procedure Act (APA).

DATES: This rule is effective June 18, 2012, without further notice, unless VA receives a significant adverse comment by May 18, 2012. If adverse comment is received, VA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO43—Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans' Appeals; Repeal of Prior Rule Change.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (this is not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Laura H. Eskenazi, Principal Deputy Vice Chairman, Board of Veterans' Appeals (01C2), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–4603. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 23, 2011, VA issued a final rule, ''Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans' Appeals; Clarification,'' 76 FR 52572 (RIN 2900–AO06), revising VA's regulations to specify that the provisions governing hearings in 38 CFR 3.103 only apply to hearings conducted before the AOJ and that the provisions in part 20 govern hearings before the Board. The revision was made because of a decision by the United States Court of Appeals for Veterans Claims (Court) in *Bryant* v. *Shinseki,* 23 Vet. App. 488 (2010), which applied the provisions of § 3.103(c)(2) to a Board hearing. The *Bryant* Court held that the provisions of § 3.103(c)(2) require a ''Board hearing officer'' to ''fully explain the issues still outstanding that are relevant and material to substantiating the claim'' and to ''suggest that a claimant submit evidence on an issue material to substantiating the claim when the record is missing any evidence on that issue or when the testimony at the hearing raises an issue for which there is no evidence in the record.'' *Id.* at 496–97.

RIN 2900–AO06, among other things, altered the language upon which the *Bryant* Court relied. VA has determined that RIN 2900–AO06 should have followed the notice-and-comment procedure of 5 U.S.C. 553(b) and (c) of the APA. Accordingly, in this direct-final rule, VA is repealing the amendments made by RIN 2900–AO06.

Based on the rationale set forth in this preamble, VA amends, in part 3, § 3.103(a) and (c)(1), and, in part 20, § 20.706 and Appendix A, to return the regulations to the language in effect before August 23, 2011.

Administrative Procedure Act

VA believes this rule is non-controversial, anticipates that this rule will not result in any significant adverse comment, and therefore is issuing it as a direct final rule.

For purposes of the direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the APA (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant comment unless the comment states why the rule would be ineffective without the additional change.

Under direct final rule procedures, if no significant adverse comment is received within the comment period, the rule will become effective on the date specified above. After the close of the comment period, VA will publish a document in the **Federal Register** indicating that no significant adverse comment was received and confirming the effective date of the rule.

However, if any significant adverse comment is received, VA will publish in the **Federal Register** a notice acknowledging receipt of a significant adverse comment and withdrawing the direct final rule. We will then publish in the **Federal Register** a proposed rule document, which will be substantially identical to this direct final rule and will serve as a proposal for the amendments in this direct final rule. Any comments received in response to the direct final rule will be treated as comments regarding the proposed rule. VA will consider such comments in developing a subsequent final rule.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rulemaking will not directly affect any small entities. Only VA beneficiaries will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.027, Post-9/11 Veterans Educational Assistance; 64.028, Post-9/11 Veterans Educational Assistance; 64.032, Montgomery GI Bill Selected Reserve; Reserve Educational Assistance Program; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing-Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116,Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing-Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing-Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on April 10, 2012, for publication.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Dated: April 13, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR parts 3 and 20 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.103 by:

■ a. Removing the last two sentences of paragraph (a) and adding, in its place, ''The provisions of this section apply to all claims for benefits and relief, and decisions thereon, within the purview of this part 3.''.

■ b. Revising paragraph (c)(1).

The revision reads as follows:

§ 3.103 Procedural due process and appellate rights.

* * * * *

(c) * * * (1) Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of part 3 of this chapter, subject to the limitations described in § 20.1304 of this chapter with respect to hearings in claims which have been certified to the Board of Veterans' Appeals for appellate review. VA will provide the place of hearing in the VA office having original jurisdiction over the claim or at the VA office nearest the claimant's home having adjudicative functions, or, subject to available resources and solely at the option of VA, at any other VA facility or federal building at which suitable hearing facilities are available. VA will provide one or more employees who have original determinative authority of such issues to conduct the hearing and be responsible for establishment and preservation of the hearing record. Hearings in connection with proposed adverse actions and appeals shall be held before one or more VA employees having original determinative authority who did not participate in the proposed action or the decision being appealed. All expenses incurred by the claimant in connection with the hearing are the responsibility of the claimant.

* * * * *

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 3. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart H—Hearings on Appeal

■ 4. Revise § 20.706 to read as follows:

§ 20.706 Rule 706. Functions of the presiding Member.

The presiding Member of a hearing panel is responsible for the conduct of the hearing, administration of the oath or affirmation, and for ruling on questions of procedure. The presiding Member will assure that the course of the hearing remains relevant to the issue, or issues, on appeal and that there is no cross-examination of the parties or witnesses. The presiding Member will take such steps as may be necessary to maintain good order at hearings and may terminate a hearing or direct that the offending party leave the hearing if an appellant, representative, or witness persists in disruptive behavior.

■ 5. Amend the table in Appendix A to Part 20 by:

■ a. Adding entry 20.1.

■ b. Revising entry 20.1304.

The revision and addition read as follows:

APPENDIX A TO PART 20—CROSS-REFERENCES

Sec.	Cross-reference	Title of cross-referenced material or comment
20.1	38 CFR 3.103(a)	*Statement of policy.*
* *	* *	* * *
20.1304	38 CFR 3.103(c), 20.700–20.717	See also re hearings.
	38 CFR 3.156	*New and material evidence.*
	38 CFR 3.160(e)	*Reopened claim.*
	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*

[FR Doc. 2012–9295 Filed 4–17–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2011–0711; FRL–9660–2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Determination of Attainment of the One-hour Ozone Standard for the Greater Connecticut Area; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of docket number.

SUMMARY: This document corrects an error in the docket number of a final rule pertaining to a determination that the Greater Connecticut serious one-hour ozone nonattainment area did not meet the applicable deadline of November 15, 2007, for attaining the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. In addition, that same final rule determined that the Greater Connecticut serious one-hour ozone nonattainment area is currently attaining the now revoked one-hour NAAQS for ozone. The correct docket number for this action is EPA–R01–OAR–2011–0711.

DATES: This correction is effective on April 18, 2012.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, email *Burkhart.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION: On, March 16, 2012 (77 FR 15607), EPA published a final rulemaking notice announcing that the Greater Connecticut one-hour ozone nonattainment area did not meet its applicable one-hour ozone attainment date of November 15, 2007, based on 2005–2007 quality-assured ozone monitoring data. Separate from and independent of the first determination, EPA also determined that the Greater Connecticut one-hour ozone nonattainment area is currently attaining the one-hour ozone standard, based on the most recent three years (2008–2010) of complete, quality-assured ozone monitoring data at all monitoring sites in the area. In the March 16, 2012 final rulemaking, EPA inadvertently stated an incorrect docket number. The correct docket number for this action is EPA–R01–OAR–2011–0711. The Notice of Proposed Rulemaking (NPR) for this action (76 FR 72377; November 23, 2011) included the correct docket number. Thus, the public had appropriate opportunity to comment on the NPR.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 5, 2012.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2012–9222 Filed 4–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0243; FRL–9659–8]

Revisions to the California State Implementation Plan, Northern Sierra and Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Northern Sierra Air Quality Management District (NSAQMD) and Sacramento Metropolitan Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP). These revisions concern negative declarations for volatile organic compound (VOC) source categories for the NSAQMD and SMAQMD. We are approving these negative declarations under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 18, 2012 without further notice, unless EPA receives adverse comments by May 18, 2012. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public

that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0243, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

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

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I. The State's Submittal

A. What negative declarations did the State submit?

Table 1 lists the negative declarations we are approving with the dates that they were adopted by the NSAQMD and SMAQMD and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
NSAQMD	Fiberglass Boat Manufacturing Materials	04/25/11	05/17/11
NSAQMD	Miscellaneous Industrial Adhesives	04/25/11	05/17/11
NSAQMD	Automobile and Light-Duty Truck Assembly Coatings	04/25/11	05/17/11
NSAQMD	Industrial Cleaning Solvents	05/19/08	08/14/08
NSAQMD	Offset Lithographic Printing and Letterpress Printing	05/19/08	08/14/08
NSAQMD	Flexible Package Printing	05/19/08	08/14/08
NSAQMD	Flat Wood Paneling Coatings	05/19/08	08/14/08
NSAQMD	Paper, Film, and Foil Coatings	05/19/08	08/14/08
NSAQMD	Large Appliance Coatings	05/19/08	08/14/08
NSAQMD	Metal Furniture Coatings	05/19/08	08/14/08
SMAQMD	Coating Operations at Aerospace Manufacturing and Rework Operations	10/27/11	01/12/12

On November 17, 2011, the submittal for Northern Sierra AQMD Negative Declarations submitted on May 17, 2011 was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

On February 17, 2009, the submittal for Northern Sierra AQMD Negative Declarations submitted on August 14, 2008 was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

On February 21, 2012, EPA determined that the Sacramento Metropolitan AQMD Negative Declaration submitted on January 12, 2012, met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these negative declarations?

There are no previous versions of these negative declarations.

C. What is the purpose of the submitted negative declarations?

The negative declarations were submitted to meet the requirements of CAA section 182(b)(2). Ozone Nonattainment areas classified at moderate and above are required to adopt volatile organic compound (VOC) regulations for the published Control Techniques Guidelines (CTG) categories and for major non-CTG sources of VOC or NO_X. If a nonattainment area does not have stationary sources covered by an EPA published CTG, then the area is required to submit a negative declaration. The negative declarations were submitted because there are no applicable sources within the NSAQMD and SMAQMD jurisdictions. EPA's technical support documents (TSD) have more information about these negative declarations.

II. EPA's Evaluation and Action

A. How is EPA evaluating the negative declarations?

The negative declarations are submitted as SIP revisions and must be consistent with Clean Air Act requirements for Reasonably Available Control Technology (RACT) (see section 182(b)(2)) and SIP relaxation (see sections 110(1) and 193.) To do so, the submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist or are planned for the NSAQMD and SMAQMD.

B. Do the negative declarations meet the evaluation criteria?

We believe these negative declarations are consistent with the relevant policy and guidance regarding RACT and SIP relaxations. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted negative declarations as additional information to the SIP because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of these negative declarations. If we receive adverse comments by May 18, 2012, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 18, 2012.

III. Administrative Requirements

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 18, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 29, 2012.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of FederalRegulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.222 is amended by adding paragraphs (a)(2)(ii) and (a)(9) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(2) * * *

(ii) Coating Operations at Aerospace Manufacturing and Rework Operations was submitted on January 12, 2012 and adopted on October 27, 2011.

* * * * *

(9) Northern Sierra Air Quality Management District.

(i) Flexible Package Printing, Flat Wood Paneling Coatings, Paper, Film, and Foil Coatings, Large Appliance Coatings, Metal Furniture Coatings, Industrial Cleaning Solvents, and Offset Lithographic Printing and Letterpress Printing were submitted on August 14, 2008 and adopted on May 19, 2008.

(ii) Fiberglass Boat Manufacturing Materials, Miscellaneous Industrial Adhesives, and Automobile and Light-Duty Truck Assembly Coatings were submitted on May 17, 2011 and adopted on April 25, 2011.

* * * * *

[FR Doc. 2012–9078 Filed 4–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0180; FRL–9652–2]

Revisions to the California State Implementation Plan, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Yolo-Solano Air Quality Management District (Yolo-Solano AQMD) portion of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions from any source that emits visible air contaminants. We are approving and rescinding local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 18, 2012 without further notice, unless EPA receives adverse comments by May 18, 2012. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0180, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
Yolo-Solano AQMD	2.3	Ringelmann Chart	01/13/10	07/20/10
Yolo-Solano AQMD	2.4	Exceptions (rescinded)	01/13/10	07/20/10
Yolo-Solano AQMD	2.7	Wet Plumes (rescinded)	01/13/10	07/20/10
Yolo-Solano AQMD	2.11	Particulate Matter Concentration	01/13/10	07/20/10
Yolo-Solano AQMD	2.12	Specific Contaminants	01/13/10	07/20/10

On August 25, 2010, EPA determined that the submittal for Yolo-Solano Rules 2.3, 2.11 and 2.12 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

Table 2 lists the previous version of the rules approved into the SIP.

TABLE 2—CURRENT SIP APPROVED VERSION OF RULES

Rule No.	Rule title	Submittal date	Approval date	Approved FR citation
2.3	Ringelmann Chart	01/21/72	02/21/72	37 FR 10856.
2.4	Exceptions	07/25/73	06/14/78	43 FR 25677.
2.7	Wet Plumes	02/21/72	05/31/72	37 FR 10856.
2.11	Particulate Matter Concentration	06/19/74	07/19/74	43 FR 25677.
2.12	Specific Contaminants	01/21/72	02/21/72	37 FR 10856.

C. What is the purpose of the submitted rule revisions?

PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM emissions. Rule 2.3 was revised to limit the emissions of visible air contaminants to the atmosphere by establishing a 20% opacity (Ringelmann 1) standard. In addition, Rule 2.3 now contains the requirements from repealed District Rules 2.4, Exemptions and Rule 2.7, Wet Plumes. Rules 2.11 and 2.12 were revised to lower the allowable particulate matter emission limit. EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)). The Yolo-Solano AQMD regulates a PM–2.5 nonattainment area classified as moderate (see 40 CFR part 81), so Rules 2.3, 2.11 and 2.12 must implement RACM/RACT.

Guidance and policy documents that we use to evaluate enforceability and RACM/RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register.**
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
4. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).
5. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.
6. ''Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures,'' EPA 450/2–92–004, September 1992.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT/RACM, and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by May 18, 2012, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 18, 2012. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 18, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 8, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (b)(11)(ii), (c)(21)(xiv)(D) and (c)(381)(i)(I) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(b) * * *

(11) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rule 2.7.

* * * * *

(c) * * *

(21) * * *

(xiv) * * *

(D) Previously approved on June 14, 1978 in paragraph (c)(21)(xiv)(A) of this section and now deleted without replacement, Rule 2.4.

* * * * *

(381) * * *

(i) * * *

(I) Yolo-Solano Air Quality Management District.

(*1*) Rule 2.3, ''Ringelmann Chart,'' revised on January 13, 2010.

(*2*) Rule 2.11, ''Particulate Matter Concentration,'' revised on January 13, 2010.

(*3*) Rule 2.12, ''Specific Contaminants,'' revised on January 13, 2010.

* * * * *

[FR Doc. 2012–8947 Filed 4–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0877; FRL–9344–1]

2,4-D; Order Denying NRDC's Petition To Revoke Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Order.

SUMMARY: In this Order, EPA denies a petition requesting that EPA revoke all pesticide tolerances for 2,4-dichlorophenoxyacetic acid (2,4-D) under section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The petition was filed on November 6, 2008, by the Natural Resources Defense Council.

DATES: This Order is effective April 18, 2012. Objections and requests for hearings must be received on or before June 18, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Units I.B and I.C. of the **SUPPLEMENTARY INFORMATION**.)

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0877. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, by appointment at One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA, between 9 a.m. to 3 p.m., Monday through Friday, excluding legal holidays. To schedule an appointment, call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Cathryn Britton, Pesticide Re-evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0136; fax number: (703) 308–8005; email address: *britton.cathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

In this document EPA denies a petition by the Natural Resources Defense Council (NRDC) to revoke pesticide tolerances. This action may also be of interest to agricultural producers, food manufacturers, or pesticide manufacturers. Potentially affected entities may include, but are not limited to:

- Crop production (North American Industrial Classification System (NAICS) code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g. agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g. agricultural workers; commercial applicators; farmers, greenhouse, nursery, and floriculture workers; residential users.

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. NAICS codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of

this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. Can I file an objection or hearing request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this order and may also request a hearing on those objections. You must file your objection or request a hearing on this order in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0877 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 18, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0877, by one of the following methods:

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

C. What should be included in objections?

The objection stage is the second stage in the multi-stage petition process under FFDCA section 408. This multi-stage process is initiated by a petition requesting establishment, modification, or revocation of a tolerance. In the petition, the petitioner has the opportunity to make its best case for why its request should be granted. Notice and comment on the petition gives interested parties the chance to express views or provide information on the subject matter of the petition.

Once EPA makes a decision on a petition, and publishes its decision in the **Federal Register**, the second stage of the petition process is triggered. At this point, parties who disagree with EPA's decision, whether it is a decision to grant or deny the petition, may file objections with EPA to the decision made. The objection stage gives parties a chance to seek review of EPA's decision before the Agency. This is an opportunity for parties to contest the conclusions EPA reached and the determinations underlying those conclusions. As an administrative review stage, it is not an opportunity to raise new issues or arguments or present facts or information that was available earlier. On the other hand, parties must do more than repeat the claims in the petition. The objection stage is the opportunity to challenge EPA's decision on the petition. An objection fails on its face if it does not identify aspects of EPA's decision believed to be in error and explain why EPA's decision is incorrect.

This two-stage process ensures that issues are fully aired before the Agency and a comprehensive record is compiled prior to judicial review. The sequential nature of the petition and objection process is essential for two reasons. The availability of administrative review before EPA gives EPA, as well as other parties, an opportunity to clearly define and articulate the complex science, policy, and legal issues involved in tolerance decisions. The two-stage process also is designed to make the administrative process as efficient as possible while still providing parties an opportunity for an adjudicatory hearing if needed. In the first stage, EPA is given the opportunity to resolve the issues raised by petition through a process similar to informal notice-and-comment rulemaking. Only material, factual issues that remain disputed following this first stage may be raised in a hearing request. Under this scheme, hearings, if needed, can focus on the key areas of factual dispute. Of course, the first stage of the petition process can only serve its winnowing function if parties are restricted at the second (objection) stage from raising new issues.

II. Background

A. What action is the agency taking?

On November 6, 2008, the Natural Resources Defense Council (NRDC) filed with EPA a petition that, among other things, requested that EPA revoke all tolerances for the pesticide 2,4-dichlorophenoxyacetic acid (2,4-D) established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a (Ref. 1). NRDC claims that EPA's conclusion outlined in the 2005 Reregistration Eligibility Decision (RED) for 2,4-D, which allowed 2,4-D to be reregistered and its tolerances retained, was based on a risk assessment that was deficient in regard to the toxicity of 2,4-D and the amount of human exposure to the chemical. Specific to 2,4-D tolerances, NRDC asserts that EPA failed to incorporate information on the endocrine disrupting effects of 2,4-D into its human health risk assessments; EPA disregarded data on neurotoxicity related to 2,4-D; EPA disregarded information showing that 2,4-D is mutagenic; EPA ignored data showing that dermal absorption of 2,4-D is enhanced by alcohol consumption, sunscreen, and DEET; and that EPA ignored the exposure of 2,4-D via breast milk to infants. Numerous studies are cited in the petition that NRDC claims supports its assertions. EPA has reviewed all of the studies cited by NRDC.

In this order, EPA is denying NRDC's petition to revoke 2,4-D's tolerances in full. Many of NRDC's claims fail to state a sufficient ground for revocation and instead merely critique the manner in which the risk assessment underlying the 2,4-D RED was conducted. Those claims that do allege relevant statutory grounds for revocation EPA finds to be without merit. The other aspects of NRDC's petition not concerning the 2,4-D tolerances are addressed in another EPA action.

B. What is the agency's authority for taking this action?

Under section 408(d)(4) of the FFDCA, EPA is authorized to respond to a section 408(d) petition to revoke tolerance either by issuing a final rule revoking the tolerances, issuing a proposed rule, or issuing an order denying the petition. (21 U.S.C. 346a(d)(4)).

III. Statutory and Executive Order Reviews

A. FFDCA/FIFRA and Applicable Regulations

1. *In general.* EPA establishes maximum residue limits, or ''tolerances,'' for pesticide residues in food and feed commodities under section 408 of the FFDCA. (21 U.S.C. 346a). Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide

residue is ''adulterated'' under section 402 of the FFDCA and may not be legally moved in interstate commerce. (21 U.S.C. 331, 342). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). Section 408 was substantially rewritten by the Food Quality Protection Act of 1996 (FQPA), which added the provisions discussed below establishing a detailed safety standard for pesticides, additional protections for infants and children, and the estrogenic substances screening program. (Pub. L. 104–170, 110 Stat. 1489 (1996)).

EPA also regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), (7 U.S.C. 136 et seq). While the FFDCA authorizes the establishment of legal limits for pesticide residues in food, FIFRA requires the approval of pesticides prior to their sale and distribution, (7 U.S.C. 136a(a)), and establishes a registration regime for regulating the use of pesticides. FIFRA regulates pesticide use in conjunction with its registration scheme by requiring EPA review and approval of pesticide labels and specifying that use of a pesticide inconsistent with its label is a violation of federal law. (7 U.S.C. 136j(a)(2)(G)).

2. *Safety standard for pesticide tolerances.* A pesticide tolerance may only be promulgated or left in effect by EPA if the tolerance is ''safe.'' (21 U.S.C. 346a(b)(2)(A)(i)). This standard applies when responding both to petitions to establish and petitions to revoke tolerances. ''Safe'' is defined by the statute to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' (21 U.S.C. 346a(b)(2)(A)(ii)). Section 408 includes numerous provisions directing how EPA should quantitatively assess the risks of pesticides in determining whether a tolerance meets the safety standard. For example, section 408 either authorizes or requires EPA to consider safety factors appropriate to use of animal experimentation data, 21 U.S.C. 346a(b)(2)(D)(ix), aggregate and cumulative exposures to the pesticide in question and other related substances, 21 U.S.C. 346a(b)(2)(D)(v) and (vi), anticipated or actual pesticide residue levels as compared to the maximum levels permitted by tolerances, 21 U.S.C. 346a(b)(2)(E), and the percentage of crops that bear pesticide residues, 21 U.S.C. 346a(b)(2)(F). *See* 21 U.S.C. 346a(b)(2)(B)(iv) (limiting an exception to the safety standard to pesticides posing risks that do not exceed ''10 times the yearly risk'' allowed under the safety standard).

Risks to infants and children are given special consideration. Providing additional protection to infants and children was a particular focus of the FQPA. Section 408(b)(2)(C) requires EPA to make a specific determination regarding the safety of tolerances to infants and children and to consider, among other things, information ''concerning the special susceptibility of infants and children to the pesticide chemical residues * * *.'' (21 U.S.C. 346a(b)(2)(C)(i)(II) and (ii)(II)). This provision also creates a presumptive additional safety factor for the protection of infants and children. Specifically, it directs that ''[i]n the case of threshold effects, * * * an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children.'' (21 U.S.C. 346a(b)(2)(C)). EPA is permitted to ''use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children.'' (Id.). Due to Congress' focus on both pre- and post-natal toxicity, EPA has interpreted this additional safety factor as pertaining to risks to infants and children that arise due to pre-natal exposure as well as to exposure during childhood years. For convenience's sake, the legal requirements regarding the additional safety margin for infants and children in section 408(b)(2)(C) are referred to throughout this Order as the ''FQPA safety factor for the protection of infants and children'' or simply the ''FQPA safety factor.''

3. *Procedures for establishing, amending, or revoking tolerances.* Tolerances are established, amended, or revoked by rulemaking under the unique procedural framework set forth in the FFDCA. Generally, a tolerance rulemaking is initiated by the party seeking to establish, amend, or revoke a tolerance by means of filing a petition with EPA. (See 21 U.S.C. 346a(d)(1)). EPA publishes in the **Federal Register** a notice of the petition filing and requests public comment. (21 U.S.C. 346a(d)(3)). After reviewing the petition, and any comments received on it, EPA may issue a final rule establishing, amending, or revoking the tolerance, issue a proposed rule to do the same, or deny the petition. (21 U.S.C. 346a(d)(4)).

Once EPA takes final action on the petition by establishing, amending, or revoking the tolerance or denying the petition, any party may file objections with EPA to EPA's decision on the petition and seek an evidentiary hearing on those objections. (21 U.S.C. 346a(g)(2)). Objections and hearing requests must be filed within 60 days. (Id.). The statute provides that EPA shall ''hold a public evidentiary hearing if and to the extent the Administrator determines that such a public hearing is necessary to receive factual evidence relevant to material issues of fact raised by the objections.'' (21 U.S.C. 346a(g)(2)(B). EPA regulations make clear that hearings will only be granted where it is shown that there is ''a genuine and substantial issue of fact,'' the requestor has identified evidence ''which, if established, resolve one or more of such issues in favor of the requestor,'' and the issue is ''determinative'' with regard to the relief requested. (40 CFR 178.32(b)). Further, a party may not raise issues in objections unless they were part of the petition and an objecting party must state objections to the EPA decision and not just repeat the allegations in its petition. *Corn Growers* v. *EPA,* 613 F.2d 266 (D.C. Cir. 2010), cert. denied, 131 S. Ct. 2931 (2011). EPA's final order on the objections is subject to judicial review. (21 U.S.C. 346a(h)(1)).

4. *Tolerance reassessment and FIFRA reregistration.* The FQPA required that EPA reassess the safety of all pesticide tolerances existing at the time of its enactment. (21 U.S.C. 346a(q)). EPA was given 10 years to reassess the approximately 10,000 tolerances in existence in 1996. In this reassessment, EPA was required to review existing pesticide tolerances under the new ''reasonable certainty that no harm will result'' standard set forth in section 408(b)(2)(A)(ii). (21 U.S.C. 346a(b)(2)(A)(ii)). This reassessment was substantially completed by the August 3, 2006 deadline. Tolerance reassessment was generally handled in conjunction with a similar program involving reregistration of pesticides under FIFRA. (7 U.S.C. 136a–1). Reassessment and reregistration decisions were generally combined in a document labeled a Reregistration Eligibility Decision (RED).

5. *Estrogenic substances screening program.* Section 408(p) of the FFDCA creates the estrogenic substances screening program. This provision directed EPA to ''develop a screening program to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring

estrogen, or such other endocrine effect, as the Administrator may designate.'' This screening program must use ''appropriate validated test systems and scientifically relevant information.'' (21 U.S.C. 346a(p)(1)).

Pursuant to the Administrator's discretionary authority, EPA adopted a two-tiered screening and testing strategy and expanded the EDSP to include the androgen and thyroid hormonal pathways and ecological effects. (63 FR 71542, 71544, December 28, 1998). The first tier involves screening ''to identify substances that have the potential to interact with the endocrine system'' and the second tier involves testing ''to determine whether the substance causes adverse effects, identify the adverse effects caused by the substance, and establish a quantitative relationship between the dose and the adverse effect.'' (Id. at 71545). Tier 1 screening is limited to evaluating whether a substance is ''capable of interacting with'' the endocrine system, and is ''not sufficient to determine whether a chemical substance may have an effect in humans that is similar to an effect produced by naturally occurring hormones.'' (Id. at 71550). Based on the results of Tier 1 screening, EPA will decide whether Tier 2 testing is needed. Importantly, ''[t]he outcome of Tier 2 is designed to be conclusive in relation to the outcome of Tier 1 and any other prior information. Thus, a negative outcome in Tier 2 will supersede a positive outcome in Tier 1.'' (Id. at 71554–71555).

In 2008, after an extensive validation process, including peer review of individual assays, EPA notified the public of the EDSP proposed Tier 1 battery of screening assays in a **Federal Register** Notice issued January 24, 2008 (73 FR 4216). EPA submitted the proposed battery for peer review by FIFRA Scientific Advisory Panel (SAP). A final report of the peer review is available. (Ref. 2). EPA announced the issuance of orders for Tier 1 Screening on October 21, 2009 for 67 chemicals including 2,4-D. (74 FR 54422, 54425). With regard to endocrine effects on humans, EPA has designated the 1998 rat two-generation reproduction study (870–3800) as the applicable Tier 2 study for the Endocrine Disruptor Screening Program. In this reproduction study, potential hormonal effects can be detected through behavioral changes, ability to become pregnant, duration of gestation, signs of difficult or prolonged parturition, apparent sex ratio (as ascertained by anogenital distances) of the offspring, feminization or masculinization of offspring, number of pups, stillbirths, gross pathology and histopathology of the vagina, uterus, ovaries, testis, epididymis, seminal vesicles, prostate, and any other identified target organs. EPA concluded that the rat two-generation reproduction study is valid for the identification and characterization of reproductive and developmental effects, including those due to endocrine disruption, based on the long history of its use, the endorsement of the 1998 test guideline by the FIFRA SAP, and acceptance by member countries of the Organisation for Economic Cooperation and Development (OECD).

In addition to the 1998 test guideline for the mammalian two-generation reproductive toxicity study, EPA has proposed the new OECD test guideline for the extended one-generation reproductive toxicity study as an alternate EDSP Tier 2 test. The extended one-generation reproductive toxicity study was not only designed to provide the traditional spectrum of information from a reproductive study, but was also enhanced to evaluate reproductive and developmental endpoints associated with the endocrine, nervous, and immune systems in male and female adult rodents and offspring at birth, weaning, and puberty, which may not necessarily be covered in other 40 CFR part 158 test guideline studies.

EPA has received all required final study reports and data from the Tier 1 battery of tests for 2,4-D. (Refs. 3,4,5,6,7,8, and 9). EPA waived the *in vivo* mammalian Tier 1 tests for 2,4-D due to the availability of a newly-submitted extended one generation reproduction study with 2,4-D. (Ref. 10). The submitted EDSP Tier 1 assays will be considered with regard to potential ecological effects and the need for Tier 2 *in vivo* studies for effects in wildlife. Although the submitted Tier 1 *in vitro* studies may inform EPA on mechanistic issues in mammalian systems (e.g., whether 2,4-D can bind to the estrogen or androgen receptor in mammals), the studies will not affect EPA's conclusions on the quantitative endocrine risks posed by 2,4-D for humans given the availability of the extended one-generation reproduction study (an *in vivo* study in rats) that comprehensively examined the risks to human health from 2,4-D's interaction with endocrine system endpoints. (See discussion in Unit VII.A.1.c.).

B. EPA Risk Assessment for Tolerances—Policy and Practice

1. *The safety determination—risk assessment.* To assess risk of a pesticide tolerance, EPA combines information on pesticide toxicity with information regarding the route, magnitude, and duration of exposure to the pesticide. The risk assessment process involves four distinct steps:

- Identification of the toxicological hazards posed by a pesticide;
- Determination of the ''Level of Concern (LOC)'' with respect to human exposure to the pesticide;
- Estimation of human exposure to the pesticide; and
- Characterization of risk posed to humans by the pesticide based on comparison of human exposure to the LOC.

a. *Hazard identification.* In evaluating toxicity or hazard, EPA reviews toxicity data, typically from studies with laboratory animals, to identify any adverse effects on the test subjects. Where available and appropriate, EPA will also take into account studies involving humans, including human epidemiological studies. For most pesticides, the animal toxicity database usually consists of studies investigating a broad range of endpoints including gross and microscopic effects on organs and tissues, functional effects on bodily organs and systems, effects on blood parameters (such as red blood cell count, hemoglobin concentration, hematocrit, and a measure of clotting potential), effects on the concentrations of normal blood chemicals (including glucose, total cholesterol, urea nitrogen, creatinine, total protein, total bilirubin, albumin, hormones, and enzymes such as alkaline phosphatase, alanine aminotransferase and cholinesterases), and behavioral or other gross effects identified through clinical observation and measurement. EPA examines whether adverse effects are caused by different durations of exposure ranging from short-term (acute) to long-term (chronic) pesticide exposure and different routes of exposure (oral, dermal, inhalation). Further, EPA evaluates potential adverse effects in different age groups (adults as well as fetuses and juveniles). (Ref. 11 at 8–10).

EPA also considers whether the adverse effect has a threshold—a level below which exposure has no appreciable chance of causing the adverse effect. For effects that have no threshold, EPA assumes that any exposure to the substance increases the risk that the adverse effect may occur.

b. *LOC/dose-response analysis.* Once a pesticide's potential hazards are identified, EPA determines a toxicological LOC for evaluating the risk posed by human exposure to the pesticide. In this step of the risk assessment process, EPA essentially evaluates the levels of exposure to the pesticide at which effects might occur in the toxicity studies. An important

aspect of this determination is assessing the relationship between exposure (dose) and response (often referred to as the dose-response analysis). EPA follows differing approaches to identifying a LOC for effects that only occur above a threshold (''threshold effects'') and those for which a threshold dose cannot be determined (''non-threshold effects''). Because EPA identified only threshold effect risks for 2,4-D, only EPA's risk assessment procedures for threshold risks are discussed in this Order.

In examining the dose-response relationship for a pesticide's threshold effects, EPA evaluates an array of toxicity studies on the pesticide. Two critical parts of this evaluation involve identification of a quantitative dose level(s) from these studies to be used in assessing the pesticide's safety to humans (referred to as the Point of Departure) and selection of appropriate safety factors for translating the results of toxicity studies in relatively small groups of animals or humans to the overall human population, including major identifiable subgroups of consumers. The Point of Departure is used in conjunction with identified safety factors to calculate a Level of Concern for a pesticide.

i. *Point of Departure.* A Point of Departure (POD) is the dose serving as the 'starting point' in extrapolating a risk to the human population. In selecting the POD, EPA first evaluates all relevant available toxicity data and conducts a weight of the evidence analysis, considering consistency, reproducibility, temporal and dose concordance, and biological plausibility of the effects reported. EPA then selects a value from a dose-response curve that is at the low end of the observable data (the no observed adverse effect level, or NOAEL, the lowest-observed adverse effect level, or LOAEL, or an extrapolated benchmark dose) as the POD. Doses in toxicology studies are generally expressed in terms of milligrams of the test substance per kilogram of body weight of the test subject per day (mg/kg/day). EPA will make separate determinations as to the Points of Departure for both short and long exposure periods as well as for the different routes of exposure (oral, dermal, and inhalation).

ii. *Safety factors.* It has long been a standard risk assessment practice, to use numerical factors—variously referred to over time as either uncertainty or safety factors [1] in conjunction with experimental toxicity data in assessing risk to humans. The two most common safety/uncertainty factors are the factors used to address the potential difference in sensitivity between humans and experimental animals (i.e., inter-species sensitivity) and within the human population (i.e., intra-species sensitivity). Generally a factor of tenfold (10X) is used as a default for both the inter-species and intra-(human) species safety factors. When EPA bases its POD on a dose level from experimental animal data, it will generally use both factors so that it accounts both for the fact that it is extrapolating a dose level in animals to humans and that there may be a wide variation in human response to the compound. This would result in a total safety factor of 100X because each factor indicates that the potential variations addressed constitute a multiple of 10X. When EPA bases its POD on a dose level from human data, only the intra-species factor would be needed because EPA is not extrapolating a dose used in an animal study.

In addition to the inter- and intra-species factors, risk assessors also apply ''additional'' or ''modifying'' safety/uncertainty factors based on specific circumstances related to the toxicity data, particularly with regard to deficiencies in that data. Additional factors are applied to address: (1) An absence of critical toxicity data; (2) the failure of a study to identify a NOAEL; (3) the necessity of using a sub-chronic data to choose a POD for estimating chronic risk; and (4) results in a study that suggest the inter- or intra-species factors may not be sufficient. Generally, a safety factor value of 10X or 3X (which is considered to be one-half of 10X on the logarithmic scale) is used to address these concerns.

EPA's safety/uncertainty factor practice with regard to pesticides was altered to a degree by the Food Quality Protection Act (FQPA). (Ref. 12). That Act established a presumptive additional ''safety'' factor of 10X to protect infants and children. The additional factor was designed to account for the completeness of the toxicity and exposure databases and the potential for pre- and post-natal toxicity. EPA has interpreted this legislation as both a ''codification and expansion'' of prior EPA practice with regard to additional safety/uncertainty factors. (Ref. 12 at A–4–A–5). It codified EPA's prior practice by requiring the additional presumptive factor to address toxicity data completeness issues (i.e., absence of a particular study, a NOAEL in a completed study, or chronic data). These traditional additional uncertainty factors became FQPA safety factors for the protection of infants and children. EPA concluded that Congress had not intended EPA to double-up on safety factors by, for example, applying an ''additional'' uncertainty factor due to missing data, and apply a FQPA safety factor as well to address the same missing data. (Ref. 12 at A–5). Congress expanded EPA's prior practice by providing that the additional FQPA safety factor for the protection of infants and children was designed to address not just toxicity data deficiencies but exposure data deficiencies as well and by its emphasis on protecting against potential pre- and post-natal toxicity. In theory, EPA could have, prior to the enactment of the FQPA, used an ''additional'' or ''modifying'' factor to address health risks to children not otherwise protected by the inter-species, intra-species, or data deficiency safety factors, but use of such a factor was not common. The FQPA also modified the status quo by making the additional safety factor for infants and children presumptive in nature.

The narrowly-focused and highly-prescriptive nature of the FQPA safety factor provision has created some practical problems for EPA in integrating the new statutory requirements with pesticide risk assessment approaches and, more generally, with Agency risk assessment practices. As noted above, the FQPA essentially codified EPA's prior risk assessment practice as to ''additional'' uncertainty factors and it expanded the use of additional uncertainty factors into new areas. The FQPA, however, did not speak to use of traditional (non-additional) uncertainty factors. Thus, the end result was that some uncertainty factors for FFDCA pesticides remained unaffected by the new statutory requirements (the inter- and intra-species factors), some uncertainty factors became FQPA safety factors (additional uncertainty factors that addressed toxicity data deficiencies), and some safety factors that either had previously never existed or were at least extremely rare were created as a

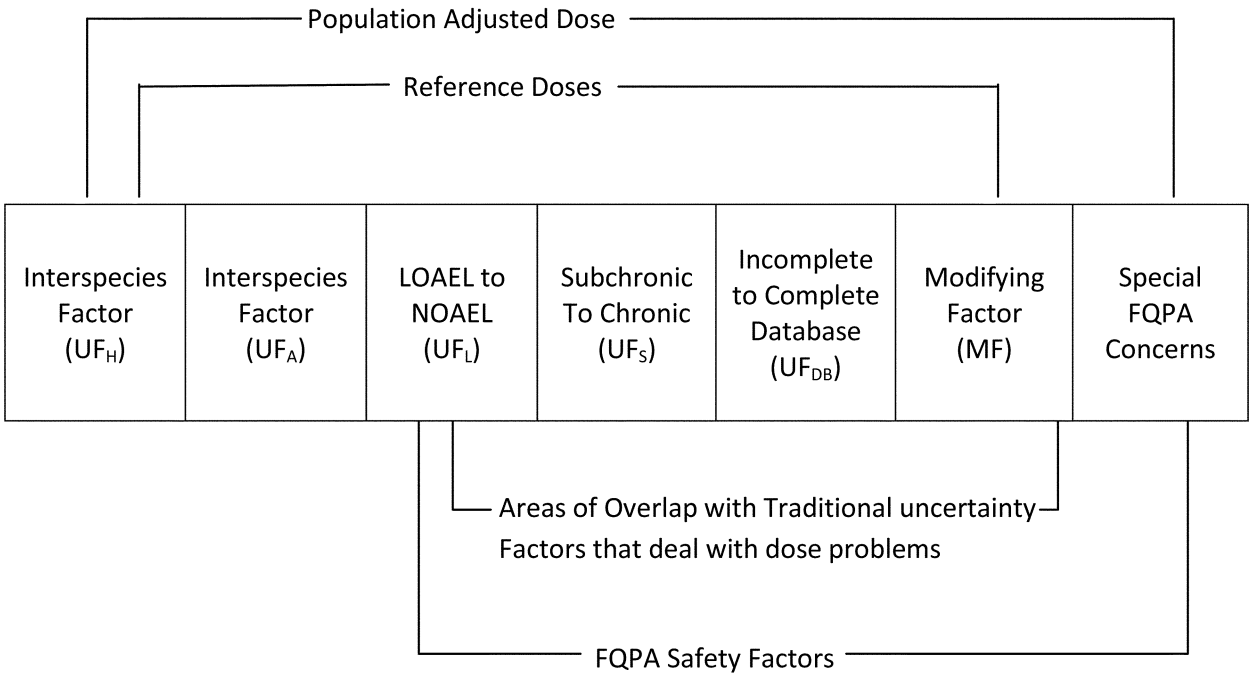
[1] Different terminology has been used to label factors used in calculating safe doses of chemical substances. At first, they were frequently referred to as ''safety'' factors. The terminology has evolved over the decades, however, such that what was once generally called a safety factor has come to be generally referred to as an uncertainty factor. (Ref. 12 at A–3). The rationale for the change was that although the use of such factors does promote safety, the factors actually address uncertainty issues (e.g., uncertainty about the differences in sensitivities of animals and humans, uncertainty concerning variation inhuman sensitivities, uncertainty created by missing data, etc.). The FQPA reintroduced the term ''safety'' factors with its reference to a ''margin of safety.'' Subsequent to the passage of FQPA, the Office of Pesticide Programs has used the terms safety factor and uncertainty factor interchangeably.

statutory phenomenon (a factor to address exposure data base deficiencies and a factor to address potential pre- and post-natal toxicity). This selective inter-weaving of statutory requirements with Agency science policy made FFDCA risk assessments for pesticides unique compared to general Agency risk assessment practice.

Pesticide risk, however, is not regulated under a single statute. Risks to workers or the environment from pesticide use are regulated by EPA under FIFRA not the FFDCA. Further, EPA may address risks posed by pesticide contamination of the environment under several other statutes, including the Safe Drinking Water Act, 42 U.S.C. 300f et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq. Prior to enactment of the FQPA's specific provisions on pesticide risk assessment, a pesticide risk assessment performed by EPA's Office of Pesticide Programs under the aegis of FFDCA section 408 could generally be easily translated for use by the Office of Pesticide Programs under FIFRA, or by the other media offices within EPA for use under other statutes. However, once pesticide risk assessment under the FQPA became not simply a matter of good scientific practice but was channeled by explicit statutory requirements, it became incumbent upon the Office of Pesticide Programs to prepare its FFDCA pesticide risk assessments in a manner that clearly delineated what aspects of the assessment were driven solely by science and what aspects primarily by FQPA statutory requirements. Specifically, the Office of Pesticide Programs had to be transparent with regard to whether it was relying on FQPA safety factors based on unique FQPA requirements (exposure database deficiencies and potential pre- and post-natal toxicity) or FQPA safety factors that are essentially a codification of prior general EPA ''additional'' safety/uncertainty factor practice.

EPA addressed these ''transparency'' issues at length in its 2002 policy statement on the FQPA safety factor. To clarify how the FQPA safety factor provision left a portion of prior safety/uncertainty practice unchanged, codified another portion, and also expanded the use of safety factors, EPA explained the overlap between the FQPA safety factor and ''additional'' safety factors in depth and included the following figure to graphically illustrate the issue:

Figure 1. Relationship between Rfd Derivation and the PAD Calculation



Special FQPA Concerns:

- Residual Concerns with respect to exposure data
- Residual Concern for pre- and postnatal toxicity

(Ref. 12, Figure 3)

With regard to providing transparency on the FQPA safety factor decisions, EPA took two steps. First, it adopted a new term, the ''special'' FQPA safety factor, for children safety factors that were based solely on the new FQPA requirements. Second, it adopted the approach of calculating two different safe doses for a pesticide: One that excluded any ''special'' FQPA safety factors and one that included them. (See discussion of reference doses and population-adjusted doses in Unit III.B.1.b.iii, below). Introducing the new terminology on FQPA safety factors into

long-established safety factor practice has proved challenging. EPA staff frequently drafted documents that (1) claimed no FQPA safety factor was needed but applied an additional uncertainty factor to address the completeness of the data base or reliance on a LOAEL; or (2) treated the ''special'' FQPA safety factor as the only type of FQPA safety factor. Such misstatements did not substantively change risk assessment outcomes but they did raise the confusion level on an already complex topic. Eventually, EPA determined that the term ''special'' FQPA safety factor caused more problems than it solved and abandoned it. However, EPA has retained the approach of continuing to calculate both a safe dose with, and without, what was once referred to as ''special'' FQPA safety factors.

(iii). *Level of Concern.* By Level of Concern (LOC), EPA means a numerical value that separates exposures that would generally be regarded as raising health concerns from those that do not. The POD (see Unit III.B.1.b.i. above) is used in estimating and describing the LOC; however, the LOC is expressed differently depending on whether the risk assessment addresses dietary or non-dietary exposures. The use of different approaches is due to the fact that non-dietary exposure assessments often involve combining exposures from multiple pathways.

For dietary risks, EPA uses the POD to calculate an acceptable LOC that is referred to as a reference dose (RfD). The RfD is calculated by dividing the POD by all applicable safety or uncertainty factors with one exception (see below). (Ref. 12 at 4–11). Safety/uncertainty factors are divided separately and sequentially into the POD. Thus, for example, if the POD is 1 milligram/kilogram/day (mg/kg/day) and there are two applicable 10X safety/uncertainty factors, then the reference dose would be 0.01 mg/kg/day (i.e., 1 mg/kg/day divided twice by 10). For convenience's sake, safety factors are often combined by multiplying them by each other. This product when divided into the POD would, of course, produce the same result as sequential division. For reduction of a safety factor, a similar process is followed. For example, if a safety factor is to be reduced by half, this is done by taking the square root of the factor rather than dividing by two. See 73 FR 42683, 42696 (July 23, 2008).

In implementing FFDCA section 408, EPA's Office of Pesticide Programs, also calculates a variant of the RfD referred to as a Population Adjusted Dose (PAD). A PAD is the RfD divided by any portion of the FQPA safety factor that does not correspond to one of the traditional additional safety factors used in general Agency risk assessments. (Ref. 12. at 13–16). As noted above, the reason for calculating PADs is so that other parts of the Agency, which are not governed by FFDCA section 408, can, when evaluating the same or similar substances, easily identify which aspects of a pesticide risk assessment are a function of the particular statutory commands in FFDCA section 408. Today, RfDs and PADs are generally calculated for both acute and chronic dietary risks although traditionally RfDs and PADs were only calculated for chronic risks. RfDs/PADs for acute and chronic risks will generally have different Points of Departure (because they are generally based on studies of different duration) and may be based on different safety factors as well depending on the characteristics of the studies relied on in choosing the POD. For example, if the study used to pick the POD for acute risk identified a NOAEL but the study used for chronic risk did not, any additional safety factor used to address this lack of a NOAEL in calculating the RfD/PAD for chronic risk would not be applicable to the acute RfD/PAD derivation.

For non-dietary, and combined dietary and non-dietary, risk assessments of threshold effects, the toxicological LOC is not expressed as an RfD/PAD but rather in terms of an acceptable (or target) Margin of Exposure (MOE) between human exposure and the POD. The ''margin'' that is being referred to in the term MOE is the ratio between human exposure and the POD which is calculated by dividing human exposure into the POD. An acceptable MOE is generally considered to be a margin at least as high as the product of all applicable safety factors for a pesticide. For example, if a pesticide needs a 10X factor to account for potential inter-species differences, 10X factor for potential intra-species differences, and 10X factor for the FQPA children's safety provision, the safe or target MOE would be a MOE of at least 1,000. What that means is that for the pesticide in the example to meet the safety standard, human exposure to the pesticide would generally have to be at least 1,000 times smaller than the POD. Like RfD/PADs, specific target MOEs are selected for exposures of different durations and routes. For non-dietary exposures, EPA typically examines short-term, intermediate-term, and long-term exposures. Additionally, target MOEs may be selected based on both the duration of exposure and the various routes of non-dietary exposure—dermal, inhalation, and oral. Target MOEs for a given pesticide can vary depending on the characteristics of the studies relied upon in choosing the POD for the various duration and route scenarios.

c. *Estimating human exposure.* Risk is a function of both hazard and exposure. Thus, equally important to the risk assessment process as determining the hazards posed by a pesticide and the toxicological LOC for those hazards is estimating human exposure. Under FFDCA section 408, EPA is concerned not only with exposure to pesticide residues in food but also exposure resulting from pesticide contamination of drinking water supplies and from use of pesticides in the home or other non-occupational settings. (*See* 21 U.S.C. 346a(b)(2)(D)(vi)). Additionally, EPA must take into account non-occupational exposure from ''other related substances.'' (*Id.*).

i. *Exposure from food.* There are two critical variables in estimating exposure in food: (1) The types and amount of food that is consumed; and (2) the residue level in that food.

Consumption is estimated by EPA based on scientific surveys of individuals' food consumption in the United States conducted by the USDA. (Ref. 11 at 12). Information on residue values comes from a range of sources including crop field trials; data on pesticide reduction (or concentration) due to processing, cooking, and other practices; information on the extent of usage of the pesticide; and monitoring of the food supply. (*Id.* at 17).

In assessing exposure from pesticide residues in food, EPA, for efficiency's sake, follows a tiered approach in which it, in the first instance, assesses exposure using the worst case assumptions that 100 percent of the crop or commodity in question is treated with, or exposed to, the pesticide and 100 percent of the food from that crop or commodity contains pesticide residues at the tolerance level. (*Id.* at 11). When such an assessment shows no risks of concern, a more complex risk assessment is unnecessary. By avoiding a more complex risk assessment, EPA's resources are conserved and regulated parties are spared the cost of any additional studies that may be needed. If, however, a first tier assessment suggests there could be a risk of concern, EPA then attempts to refine its exposure assumptions to yield a more realistic picture of residue values through use of data on the percent of the crop or commodity actually treated with, or exposed to, the pesticide and data on the level of residues that may be present on the treated crop or

commodity. These latter data are used to estimate what has been traditionally referred to by EPA as ''anticipated residues.'' More information on refining estimates of pesticide exposure can be found at Ref. 11; 70 FR 46706, 46732, August 10, 2005).

ii. *Exposure from water.* EPA may use either or both field monitoring data and mathematical water exposure models to generate pesticide exposure estimates in drinking water. Monitoring and modeling are both important tools for estimating pesticide concentrations in water and can provide different types of information. Monitoring data can provide estimates of pesticide concentrations in water that are representative of specific agricultural or residential pesticide practices and under environmental conditions associated with a sampling design. Although monitoring data can provide a direct measure of the concentration of a pesticide in water, it does not always provide a reliable estimate of exposure because sampling may not occur in areas with the highest pesticide use, and/or the sampling may not occur when the pesticides are being used.

In estimating pesticide exposure levels in drinking water, EPA most frequently uses mathematical water exposure models. EPA's models are based on extensive monitoring data and detailed information on soil properties, crop characteristics, and weather patterns. (69 FR 30042, 30058–30065, May 26, 2004). These models calculate estimated environmental concentrations of pesticides using laboratory data that describe how fast the pesticide breaks down to other chemicals and how it moves in the environment. These concentrations can be estimated continuously over long periods of time, and for places that are of most interest for any particular pesticide. Modeling is a useful tool for characterizing vulnerable sites, and can be used to estimate peak concentrations from infrequent, large storms.

iii. *Exposure from residential use of pesticides.* Residential assessments examine exposure to pesticides in non-occupational or residential settings (e.g., homes, parks, schools, athletic fields or any other areas frequented by the general public). Exposures to pesticides may occur to persons who apply pesticides or to persons who enter areas previously treated with pesticides. Such exposures may occur through oral, inhalation, or dermal routes.

Residential assessments are conducted through examination of significant exposure scenarios (e.g., children playing on treated lawns or homeowners spraying their gardens) using a combination of generic and pesticide-specific data. To regularize this process, OPP has prepared Standard Operating Procedures (SOPs) for conducting residential assessments on a wide array of scenarios that are intended to address all major possible means by which individuals could be exposed to pesticides in a non-occupational environment (e.g. homes, schools, parks, athletic fields, or other publicly accessible locations). The SOPs identify relevant generic data and construct algorithms for calculating exposure amounts using these generic data in combination with pesticide-specific information. The generic data generally involve survey data on behavior patterns (e.g., activities conducted on turf and time spent on these activities) and transfer coefficient data. Transfer coefficient data measure the amount of pesticide that transfers from the environment to humans from a defined activity (e.g., hand contact with a treated surface or plant). Specific information on pesticides can include information on residue levels as well as information on environmental fate such as degradation data.

d. *Risk characterization.* The final step in the risk assessment is risk characterization. In this step, EPA combines information from the first three steps (hazard identification, LOC/dose-response analysis, and human exposure assessment) to quantitatively estimate the risks posed by a pesticide. Separate characterizations of risk are conducted for different durations of exposure. Additionally, separate and, where appropriate, aggregate characterizations of risk are conducted for the different routes of exposure (dietary and non-dietary).

For threshold risks, EPA estimates risk in one of two ways. Where EPA has calculated a RfD/PAD, risk is estimated by expressing human exposure as a percentage of the RfD/PAD. Exposures lower than 100 percent of the RfD/PAD are generally not of concern. Alternatively, EPA may express risk by comparing the MOE between estimated human exposure and the POD with the acceptable or target MOE. As described previously, the acceptable or target MOE is the product of all applicable safety factors. To calculate the actual MOE for a pesticide, estimated human exposure to the pesticide is divided into the POD. In contrast to the RfD/PAD approach, higher MOEs denote lower risk. Accordingly, if the target MOE for a pesticide is 100, MOEs equal to or exceeding 100 would generally not be of concern. As a conceptual matter, the RfD/PAD and MOE approaches are fundamentally equivalent. For a given risk and given exposure of a pesticide, if exposure to a pesticide were found to be acceptable under an RfD/PAD analysis it would also pass under the MOE approach, and vice-versa.

2. *EPA policy on the FQPA safety factor for the protection of infants and children.* As the previous brief summary of EPA's risk assessment practice indicates, the use of safety factors plays a critical role in the process. This is true for traditional 10X safety factors to account for potential differences between animals and humans when relying on studies in animals (inter-species safety factor) and potential differences among humans (intra-species safety factor) as well as the FQPA's additional 10X safety factor.

In applying the FQPA safety factor provision, EPA has interpreted it as imposing a presumption in favor of applying an additional 10X safety factor. (Ref. 12 at 4, 11). Thus, EPA generally refers to the additional 10X factor as a presumptive or default 10X factor. EPA has also made clear, however, that this presumption or default in favor of the additional 10X is only a presumption. The presumption can be overcome if reliable data demonstrate that a different factor is safe for children. (*Id.*). In determining whether a different factor is safe for children, EPA focuses on the three factors listed in FFDCA section 408(b)(2)(C)—the completeness of the toxicity database, the completeness of the exposure database, and potential pre- and post-natal toxicity. In examining these factors, EPA strives to make sure that its choice of a safety factor, based on a weight-of-the-evidence evaluation, does not understate the risk to children. (*Id.* at 24–25, 35).

IV. 2,4-D Regulatory Background

2,4-D is a phenoxy herbicide, plant growth regulator, and fungicide that has been used in the United States since the mid 1940s. It comes in multiple chemical forms and is currently found in approximately 600 end-use products registered for agricultural, residential, industrial, and aquatic uses. It is formulated primarily as an amine salt in an aqueous solution or as an ester in an emulsifiable concentrate. There are 85 tolerances for 2,4-D listed in the Code of Federal Regulations.

1. *Special review based on human carcinogenicity.* On September 22, 1986, the Agency issued a preliminary notification of Special Review of 2,4-D because of concerns for epidemiological links of 2,4-D to non-Hodgkin's lymphoma from both occupational and residential exposure. In 1987, EPA requested that the FIFRA SAP examine

the evidence bearing on 2,4-D's carcinogenicity. The Panel concluded that the present data for animals and humans were inadequate for determining carcinogenicity and that 2,4-D should be classified under *Group D* of EPA's cancer guidelines—Not Classifiable as to Human Carcinogenicity. (Refs. 13 and 14). Based upon findings that existing data did not support a link between 2,4-D and carcinogenicity, the Agency published a proposed decision Not to Initiate Special Review on March 23, 1988 (53 FR 9590) and deferred a final decision until reregistration.

To further address the potential link of non-Hodgkin's lymphoma to 2,4-D exposure, a joint Science Advisory Board (SAB)/SAP Special Joint Committee was convened to review available epidemiological and other data on 2,4-D. In 1994, the Committee concluded that ''the data are not sufficient to conclude that there is a cause and effect relationship between exposure to 2,4-D and non-Hodgkin's lymphoma.'' (Ref. 15). In 1997, EPA re-examined the weight of the evidence on cancer taking into account two new cancer bioassays in mice and rats. (Ref. 16). These new bioassays showed no statistically significant tumor response in either species. Although EPA concurred with the Joint Committee's recommendation to classify 2,4-D under Group D, EPA requested further histopathological examinations of mouse and rat tissue from previously conducted studies to further inform its decision. These exams showed no evidence to alter the prior findings, and on March 16, 1999, the Agency notified the 2,4-D Task Force that the EPA would continue to classify 2,4-D under Group D. (Ref. 17).

Since the March 16, 1999 decision, the Agency has twice reviewed epidemiological studies linking cancer to 2,4-D exposure during the reregistration process of 2,4-D. In the first review, completed January 14, 2004, EPA concluded there was no additional evidence that would implicate 2,4-D as a cause of cancer. (Ref. 14). The second review of available epidemiological studies occurred in response to comments received during development of the 2,4-D RED. EPA's report, dated December 8, 2004, found that none of the more recent epidemiological and animal studies supported a conclusion that 2,4-D was a likely human carcinogen. (Ref. 15). Because the Agency determined that the existing data did not support a conclusion that links human cancer to 2,4-D exposure, it decided not to initiate a Special Review of 2,4-D in 2007. (72 FR 44510, August 8, 2007).

A part of this cancer assessment was the review of data bearing on 2,4-D's potential mutagenicity. EPA has consistently found that these data do not support classification of 2,4-D as a carcinogen. This view was concurred in by the Joint Committee of SAB/SAP.

2. *FFDCA tolerance reassessment and FIFRA pesticide reregistration.* As required by the Food Quality Protection Act of 1996, EPA reassessed the safety of the 2,4-D tolerances under the safety standard established in the FQPA. In the June 2005 RED for 2,4-D, EPA evaluated the human health risks associated with all registered uses of 2,4-D and determined that there is a reasonable certainty that no harm will result from aggregate non-occupational exposure to the pesticide chemical residue. (Refs.18 and 19). In making this determination, EPA considered dietary exposure from food and drinking water and all other non-occupational sources of pesticide exposure for which there is reliable information. The Agency concluded that with the adoption of the risk mitigation measures identified in the 2,4-D RED, all of the tolerances for 2,4-D meet the safety standard as set forth in section 408(b)(2)(D) of the FFDCA. Therefore, the tolerances established for residues of 2,4-D were considered reassessed as safe under section 408(q) of FFDCA.

At the time of 2,4-D reregistration, there were no available studies on 2,4-D that adequately assessed its endocrine disruption potential, and the Agency determined that a repeat 2-generation reproduction study should be conducted to evaluate comparative thyroid effects in young and adult animals as well as the gonads and reproductive/developmental endpoints more thoroughly. The 2,4-D RED indicated that a new reproduction study using the revised 2-generation reproduction study protocol and measurement of additional parameters was needed to address these data gaps. EPA also required submission of a developmental neurotoxicity study. Although these data were needed, EPA concluded that the toxicology database was adequate for identification of doses and endpoints of concern for risk assessments. The values selected for risk assessments were protective of all observed adverse effects. Additionally, EPA retained the additional FQPA 10X safety factor for the protection of infants and children to address the uncertainty raised by the missing data. Finally, 2,4-D toxicity generally occurs at doses above renal saturation, i.e., doses above which the excretory processes could readily eliminate the chemical; the Agency's risk assessment regulated at doses below this level. Consequently, the Agency had high confidence that the risk assessment did not underestimate risks from exposure to 2,4-D.

On February 28, 2006, EPA issued a data call-in for 2,4-D that, among other things, required submission of the reproduction and developmental neurotoxicity studies mentioned above. In February 2010, in response to the data call-in, the Industry Task Force II on 2,4-D Research Data submitted a state-of-the-science extended one-generation reproduction toxicity study to fulfill these requirements. The 2,4-D extended one-generation reproductive toxicity study included a detailed assessment of endocrine endpoints (thyroid, estrus cyclicity, sexual maturation (animals were observed for delays in vaginal opening and preputial separation), andrology, and ovarian staging), in addition to reproductive function, developmental neurotoxicity, and immunotoxicity endpoints.

3. *More recent actions.* EPA has conducted a number of rulemakings with respect to 2,4-D tolerances since completion of tolerance reassessment. In July, 2005, EPA established new 2,4-D tolerances on hops, soybeans, and wild rice. (70 FR 43298, July 27, 2005). This action was based on the safety determination in the 2,4-D tolerance reassessment. No comments were received. In June 2007, EPA proposed numerous changes to the 2,4-D tolerances to implement determinations made in the 2,4-D tolerance reassessment (72 FR 31221). These proposed changes included modification of the chemical terms used in the tolerance expression, the amendment of various tolerance levels, and removal of certain tolerances. No comments relevant to 2,4-D tolerances were received and EPA finalized the tolerance actions on September 12, 2007 (72 FR 52013). 2,4-D tolerances have been modified three times since 2007. In 2008, minor changes were made to correct errors in the 2007 rulemaking. (73 FR 53732, September 17, 2008). NRDC commented on the proposal for these changes but did not raise any new information that had not been addressed in response to their comments on the RED. In 2009, EPA modified the 2,4-D tolerance for cranberries. No comments were received. (74 FR 48408, September 23, 2009). In 2011, a tolerance for teff was established, for which EPA received no significant comments. (76 FR 55814, September 9, 2011).

Additionally, in response to an application to amend the 2,4-D FIFRA registration, EPA, in 2011, re-examined the risks of 2,4-D. That re-examination

took into account the newly submitted extended one-generation reproduction toxicity study evaluating 2,4-D's potential for causing endocrine, neurotoxic, or imumunotoxic effects. As part of that risk assessment, EPA re-evaluated the decision to retain the FQPA safety factor. Because the FQPA safety factor had previously been retained due to the absence of data on endocrine and neurotoxic effects and those data requirements had been met, EPA determined that the 10X FQPA safety factor should be removed. (Refs. 20 and 21).

V. The Petition To Revoke Tolerances

NRDC filed a petition dated November 6, 2008 (petition), requesting, among other things, that EPA revoke all 2,4-D tolerances. (Ref. 1). In response to EPA's publication of the petition pursuant to section 408(d) of the FFDCA, NRDC submitted a comment in support of its petition. (Ref. 22). The petition asserts that EPA's conclusion outlined in the 2005 2,4-D RED, allowing 2,4-D to be reregistered and its tolerances retained, was based on incorrect information and assumptions related to the toxicity of 2,4-D and the amount of human exposure to the chemical. Specific to tolerances, the petition asserts that EPA failed to incorporate information on the endocrine disrupting effects of 2,4-D into its human health risk assessments; EPA disregarded data on neurotoxicity related to 2,4-D; EPA disregarded information showing that 2,4-D is mutagenic; EPA ignored data showing that dermal absorption of 2,4-D is enhanced by alcohol consumption, sunscreen, and DEET; and that EPA ignored the exposure of infants to 2,4-D via breast milk. Numerous studies are cited in the petition that NRDC says supports their assertions. EPA has reviewed all of the studies submitted by NRDC. NRDC also relies, in part, on portions of its comments submitted on the 2,4-D RED in support of its petition. (Ref. 1 at 11; Refs. 23 and 24).

VI. Public Comment

EPA published notice of the petition for comment on December 24, 2008 (73 FR 79100). EPA received approximately 500 comments on the petition. The vast majority of the comments were against the petition, and many discussed the importance of 2,4-D to various industries, including forestry, grains, landscaping, and minor use crops. (See e.g., Ref. 25). These issues, however, are irrelevant to the safety determination under FFDCA section 408. Two of the comments opposing the petition, from the Industry Task Force on 2,4-D Research Data II (Task Force), and National Council for Air and Stream Improvement (NCASI), provided detailed comments on the petition and on the studies cited in the petition. (Refs. 26 and 27). The Task Force and NCASI cited additional studies during the comment period for EPA to consider in its response to the petition.

Twenty-three comments were in support of the petition and agreed with NRDC that 2,4-D's tolerances should be revoked. Most of the comments that were in support of the petition assert in a general way that 2,4-D is ''unsafe,'' but provide little or no reasoning for this conclusion. Two of the comments in support of the petition, one from Beyond Pesticides and a combined comment from the New York State Department of Health and New York State Department of Environmental Conservation, identified additional studies for EPA consideration. (Refs. 28 and 29). Additionally, the comment from Beyond Pesticides asserts that EPA ignored evidence that EPA endangers children by removing the FQPA 10X safety factor; and EPA has failed to perform a cumulative assessment for 2,4-D and other phenoxy herbicides. Finally, NRDC submitted as a comment additional material in support of its petition. (Ref. 22).

VII. Ruling on Petition

This Order addresses NRDC's petition to revoke 2,4-D tolerances. EPA has divided NRDC's grounds for revocation into two main categories—toxicology and exposure—and addressed separately each claim under these categories. Each specific claim of NRDC is summarized in Unit VII immediately prior to EPA's response to the claim.

This Order also constitutes a response to the comments received during the public comment period on the petition as they relate to NRDC's arguments for revoking tolerances. Below are the Agency's responses to NRDC's assertions and the related public comments. Detailed reviews of the studies cited by NRDC and commenters can be found in the docket. (Ref. 30).

A. Toxicology

NRDC has raised four toxicological issues regarding the safety of 2,4-D: Endocrine disruption, neurotoxicity, mutagenicity, and impacts on body weight. Each of these issues are addressed below.

1. *Endocrine Disruption*—a. *NRDC Claims.* In support of their petition, NRDC cites several studies that it says, ''* * * establish the dangerous endocrine disrupting effects of 2,4-D and underscore the need for EPA to consider these impacts in its assessment of the health impacts of 2,4-D.'' (Ref. 1 at 2). NRDC asks EPA to incorporate information on the endocrine disrupting effects of 2,4-D into its human health risk assessments. (Id. at 2).

Specifically, NRDC cites several studies, discussed below, that it contends show that 2,4-D is an endocrine disruptor. (Id. at 4–5). NRDC quotes a portion of the 2,4-D RED, which states: ''Based on currently available toxicity data, there is evidence of the endocrine-disrupting effects of 2,4-D on mammals. However, no specific measures of such effect have been attempted'' and a statement that when the EDSP is underway, 2,4-D may be subject to additional screening or testing. (Id. at 5–6). NRDC argues that EPA has relied on the delay in conducting the EDSP to neglect analyzing the endocrine effects of 2,4-D despite the existence of ''an entire category of existing scientific studies demonstrating adverse health effects.'' (Id. at 6). It uses atrazine as an example of a case where EPA has considered endocrine disrupting effects in the absence of the formal screening program. The atrazine example, according to NRDC, shows that EPA cannot claim that the existing studies on endocrine disrupting effects cannot be considered in human health risk assessments. NRDC states that ''EPA should have quantitatively incorporated these studies and these effects in its risk assessment of 2,4-D.'' (Id.).

b. *Public comments.* In its comments, Beyond Pesticides supports NRDC's petition to cancel all 2,4-D product registrations due to the alleged wealth of relevant scientific information available that indicates that 2,4-D is a potential endocrine disruptor. (Ref. 28 at 3). Beyond Pesticides cites additional studies to those cited by NRDC. (Id. at 3–4).

The 2,4-D Task Force, in its comments, disputes NRDC's claim that 2,4-D is an endocrine disruptor. (Ref. 26 at 11–18). Specifically, the Task Force argues that NRDC's assertions that 2,4-D has been shown to be a potent endocrine disruptor are not supported by the weight of the evidence surrounding 2,4-D's potential for endocrine disrupting effects. The Task Force disagrees with NRDC's contention that EPA ignored endocrine disrupting effects given that the Agency issued a data call-in for a study that assesses thyroid, gonadal, reproductive and other endocrine-sensitive endpoints and while awaiting the study imposed an additional 10X uncertainty factor to account for the data gap. (Id. at 11–12). The Task Force provided detailed

comments on each of the studies cited by NRDC disputing NRDC's conclusions.

Additionally, National Council for Air and Stream Improvement (NCASI), in its comments, takes issue with NRDC's characterization of various studies indicating that 2,4-D was an endocrine disruptor. (Ref. 27 at 2–3). NCASI indicates that studies cited by NRDC to support their claim for endocrine disruption concerns are not consistent with other studies of 2,4-D estrogenicity. (Id. at 3).

c. *EPA response.* With regard to endocrine effects, NRDC argues that EPA should revoke the 2,4-D tolerances because EPA failed to properly assess 2,4-D's endocrine effects in the RED risk assessment. For example, NRDC contends that ''[r]ecent studies [ ] establish the dangerous endocrine disrupting effects of 2,4-D and underscore the need for EPA to consider these impacts in its assessment of the health impacts of 2,4-D.'' (Ref. 1 at 4). NRDC concludes this portion of its petition by asserting that ''given the studies suggesting that 2,4-D has the potential to cause endocrine disrupting effects, EPA should have quantitatively incorporated these studies and these effects in its risk assessment of 2,4-D.'' (Id. at 6).

These claims by NRDC do not allege sufficient grounds for revocation of the 2,4-D tolerances. The statutory standard for revocation of a pesticide tolerance is that the tolerance is not ''safe.'' 21 U.S.C. 346a(b)(2)(A)(i). ''Safe'' is defined by the statute to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' 21 U.S.C. 346a(b)(2)(A)(ii). As explained in Unit II.B., EPA has implemented this safety standard, consistent with the statute, by a quantitative risk assessment process that (1) identifies the harms or toxic effects caused by the pesticide, (2) ascertains the safe level of exposure as to those harms; and (3) determines whether aggregate exposure to the pesticide exceeds that safe level. Thus, safety is not simply a question of a pesticide's potential to cause harm but an issue involving a combination of factors including the pesticide's potential harms, the pesticide's potency (i.e., at what exposure levels will it cause harm), and the level of human exposure to the pesticide.

The flaw in NRDC's petition with regard to its endocrine claim is that it addresses only 2,4-D's potential harm and not 2,4-D's safety. NRDC claims that 2,4-D has the ''potential to cause endocrine disrupting effects * * * [and] EPA should have quantitatively incorporated [this information on 2,4-D's harmful effects] in its risk assessment of 2,4-D.'' While the reference to endocrine effects clearly addresses the first element of the risk assessment process—identification of a harm or toxic effect—NRDC's assertion that EPA should quantitatively incorporate the endocrine studies cited by NRDC in its risk assessment falls far short of addressing the other elements of the risk assessment process. NRDC does not allege that quantitative incorporation of the studies it cites would alter EPA's prior conclusion regarding the safe exposure level for 2,4-D. Yet, unless NRDC claims that the safe level of exposure should be lowered, it has no basis to argue that the toxicity data on endocrine effects it cites indicate a lack of safety. At best, NRDC is asking EPA to take a revised look at the toxicity of 2,4-D. Yet, the ground for tolerance revocation is a lack of safety. Accordingly, NRDC's claim that the 2,4-D tolerance should be revoked due to 2,4-D's endocrine effects is denied due to a failure to make a proper claim for revocation by, at the very least, alleging facts that, if proven, would meet the statutory standard for revocation.

Despite the inadequacy of petitioners' endocrine claims, EPA has examined the evidence cited by petitioners in light of the most current toxicity data on 2,4-D for the purpose of evaluating whether the evidence raises sufficient grounds for concern that EPA should consider initiating action that might lead to revocation of the 2,4-D tolerances.

To the extent data were available, EPA examined 2,4-D's potential for endocrine disruption in the 2005 RED. However, as noted there, EPA was handicapped in this evaluation due to the fact that the otherwise acceptable two-generation rat reproduction study conducted with 2,4-D did not adequately address endocrine concerns. Although several toxicity studies required under 40 CFR part 158 involve an examination of organs or endpoints related to endocrine disruption, the rat reproduction study is the most critical of these required studies. In fact, the two-generation rat reproduction study, as described in the 1998 EPA guideline, has been designated as the study that will be used in Tier 2 of the EDSP for evaluating mammalian endocrine effects. As mentioned above, EPA issued a data call-in for a two-generation reproduction study in rats to address this data gap. In response to the data call-in, the Task Force submitted an extended one-generation reproductive toxicity study to fulfill this requirement. The 2,4-D extended one-generation study examined endocrine disruption as well as developmental neurotoxicity and developmental immunotoxicity. This extended one-generation reproductive toxicity study was conducted in accordance with OECD guidelines and is considered a state-of-the-science study with regard to examining these toxicological and endocrine effects.

As to endocrine effects, the extended one-generation reproduction study examined: Potential effects on parental male and female reproductive function, offspring survival and growth including endocrine and systemic toxicity parameters such as estrous cyclicity (female adult rats and offspring); sperm parameters; anogenital distance; nipple retention; puberty onset (vaginal opening and balano-preputial separation); adrenal weight, thyroid/parathyroid gland weight, pituitary gland weight, testes and ovarian weight, thyroid hormone effects; and histopathology of a wide range of tissues including the thyroid, adrenal, pituitary, testes, and ovary. (Refs. 31 and 32). The endpoints examined in the extended one-generation reproduction study meet or exceed the specifications in the latest guideline (1998) for the two-generation reproduction study. (Ref. 33). Specifically, this extended one-generation study included evaluation of sperm parameters and thyroid assays across various age groups, which are not part of the two-generation study. The main design difference between an extended one-generation study and a two-generation study is that the latter study is run for a full two generations no matter what results are seen in the first generation. On the other hand, an extended one-generation study is not continued into the second generation if triggers on the key endpoints do not indicate there is a potential concern. This design eliminates the needless destruction of animals, but does not reduce the scientific value of the data.

The extended one-generation study for 2,4-D showed no treatment-related effects on potential estrogenic effects or androgen-sensitive endpoints (no adverse effects on anogenital distance, nipple retention, age at vaginal opening, estrous cycle length or pattern, mating, fertility, time to mating, gestation length, pre-implantation loss, number of corpora lutea, sperm parameters, ovarian follicle counts, and reproductive organ weights and histopathology; no evidence of hyposadias, ectopic tests, or treatment-related testicular prostate or seminal vesicle histopathology). Anti-androgenic

effects in terms of decreased male reproductive organ weights were observed in some animals but they were not statistically significant and were associated with decreased body weight. No treatment-related effects on reproductive organ histopathology were observed. Slight effects were seen in the thyroid (increases or decreases in thyroid weight and in T3, T4, and TSH hormones in some animals) but no dose response relationship was shown. These effects were more significant at the highest dose tested but still were considered adaptive and not adverse (i.e., the thyroid responded to insult and corrected itself) due to the fact that this dose exceeded the renal saturation level. Accordingly, the highest dose was considered a No Observed Adverse Effect Level (NOAEL) for thyroid effects.

Overall, the effects observed at the lowest doses in the extended one-generation reproductive study for both the parental rats and offspring were not based on endocrine-related endpoints but on nephrotoxicity manifested as increased kidney weights, and degenerative lesions in the proximal convoluted tubules in the main study in the first-generation adult rats (P_1 generation; 45.3 mg/kg bw/day); kidney toxicity manifested as increased kidney weights and increased incidence of degeneration of the proximal convoluted tubules in the adult offspring (F_1 adults; 55.6/46.7 (M/F) mg/kg/day); and decreased body weight observed in the male pup offspring (F_1, Set 1a males, PND 28–69; 76.6 mg/kg/day) (see discussion in Unit VII.A.4.c.). The NOAEL for parents and offspring for these effects is approximately 20 mg/kg/day, (Ref. 32), which is greater than the NOAEL of 5 mg/kg/day from a rat chronic toxicity study that was used as the POD in assessing chronic dietary, long-term dermal, and long-term inhalation in the human health risk assessment supporting the 2,4-D RED. (Ref. 18). In that chronic study, the effects seen at the LOAEL of 75 mg/kg/day were decreased body-weight gain and food consumption, alteration in hematology and clinical chemistry parameters, decreased T4, glucose, cholesterol, and triglycerides. The use of the NOAEL from the chronic rat study as the POD in the RED risk assessment is protective of chronic effects identified in the extended one-generation study.

The NOAEL found in the extended one-generation reproductive study is also similar to the NOAEL of 15 mg/kg/day seen in a rat subchronic oral toxicity study and used to identify a POD for subchronic effects in the RED. (Ref. 18 at 22). The effects seen at the LOAEL of 100 mg/kg/day in the rat subchronic study were decreased body weight/body-weight gain, alterations in some hematology [decreased platelets (both sexes)] and clinical chemistry [decreased T3 (females) and T4 (both sexes)] parameters, and cataract formation. This study was used for the intermediate incidental oral and intermediate dermal and inhalation assessments. Again, the NOAEL in the extended one-generation study is greater than the NOAEL chosen as a POD for subchronic effects, and therefore, the RED assessment is protective of any subchronic effects identified in the extended one-generation study.

As noted above, EPA concluded that this study showed no adverse effects on endocrine endpoints. Accordingly, the extended one-generation reproduction study's comprehensive examination of 2,4-D's potential effect on the endocrine system provides no indication that EPA should consider initiating action to revoke 2,4-D tolerances.

Nothing in the data cited by NRDC or other commenters contradicts this conclusion. For the most part, the data relied upon by NRDC address whether 2,4-D is capable of interacting with the endocrine system. The studies do not provide quantitative information appropriate for use in risk assessment or the quantitative information they provide shows that EPA's risk assessment is protective of endocrine effects. Many of the studies cited by NRDC were studies conducted to investigate 2,4-D's mechanism of action and involved testing at a single high dose designed to ensure effects were seen. In rats, although 2,4-D is readily absorbed in the blood, it is not metabolized but removed from the blood by the kidneys and rapidly excreted through the urine. Once the dose of 2,4-D in rats exceeds about 50 mg/kg/day, however, the kidney (renal) clearance mechanism is overwhelmed and 2,4-D builds up in the body resulting in toxic effects. The toxic effects seen at doses above the renal saturation level are generally not seen at lower doses. EPA has assessed the risk of 2,4-D based on the dose levels below the renal saturation level at which adverse effects occur.

NRDC first cites a study in fish (Xie (2005)) that it contends shows that 2,4-D has ''relatively potent estrogenic effects in fish.'' (Ref. 1 at 4 and Ref. 34). As an initial matter, a study in fish would carry little weight regarding a safe tolerance level when compared to a study in mammals such as the extended one-generation reproduction study in rats. Additionally, EPA does not regard the Xie study as reliable due to a failure to identify the sex of the fish used. The study reported that 7-day exposure of rainbow trout juveniles to 1.64 mg/L 2,4-D (active or formulated product undetermined) produced a 93-fold increase in plasma vitellogenin compared to untreated fish. This was a significant difference from the untreated control. Six fish were used per test concentration, and they were described as ''juvenile rainbow trout (standard length: 11.5 ± 2.2 cm) provided by the California Department of Fish and Game Mojave River Hatchery (Victorville, California)'' with no reference to their sex or specific age information. However, the sex of the fish is significant with regard to vitellogenin levels. Male fish generally maintain null or very low levels of vitellogenin in their natural state. In the presence of endocrine disruptors, male fish will have significant levels of vitellogenin in their blood. Female fish will have naturally increasing levels of vitellogenin as they approach maturity and maintain those levels upon maturation. Given the sample size and a failure to identify the sex of the fish, the results seen may be a result of unbalanced numbers of male and female fish in the control and treated groups. Several other difficulties with the Xie study, including the failure to identify a biologically significant effect on vitellogenin, are noted in the comments of the Task Force and NCASI.

NRDC next relies on two studies (Rawlings (1998) and Charles (1996)), which it alleges show that 2,4-D causes hormone suppression in animals. (Refs. 35 and 36). In the Rawlings study, 2,4-D treatment resulted in a significant ($p < 0.05$) decrease in serum T4 concentrations compared to control. No other significant effects were noted for serum cortisol, insulin, estradiol, LH pulse frequency (mean and amplitude), mean serum FSH, progesterone, or gross signs of toxicity or body weight change. In the absence of a quantifiable relationship between serum T4 concentration and effects upon survival, growth, or reproduction, the results of this study do not evidence an adverse effect that could be incorporated directly into the Agency risk assessment process. The Charles study reports on a subchronic study in rats and was submitted to EPA and relied upon in the RED risk assessment. The study identified a NOAEL of 15 mg/kg/day and a LOAEL of 100 mg/kg/day. The effects seen at 100 mg/kg/day did include thyroid effects such as decreased thyroxine, increased thyroid weight, and hypertrophy of follicular cells. These effects were seen at a dose (100 mg/kg/day) that was well above the

renal saturation level and the NOAEL from the study was used to set the safe dose for subchronic exposures to 2,4-D and is protective of effects occurring at higher dose levels. (Ref. 18 at 36).

NRDC also cites several studies (Liu (1996), Kim (2005), Kim (2002)) which it claims show that 2,4-D can result in effects on testicular cells and the prostate. (Refs. 37, 38, and 39). Liu is an *in vitro* study investigating possible mechanisms of action in relation to Leydig cell adenomas and peroxisome proliferation. 2,4-D was one of the peroxisome proliferators evaluated in the study. Kim (2005) also is an *in vitro* study investigating potential androgenic mechanisms. EPA could not evaluate the Kim (2002) study because it is written in Korean and not available to EPA in English. The Task Force argues that the 2002 study is irrelevant because it involved doses above the renal saturation level and thus the 2005 study, which was designed to investigate the effects in the 2002 study, is of limited value given the high dosing in the 2002 study. Liu also appears to have shown statistically significant effects for 2,4-D on production of estradiol only at very high doses. In any event, EPA has adequate data in living animals regarding 2,4-D's potential to affect testicular cells or the prostate. There is an adequate/guideline cancer study in rats that dosed at levels of 5, 75, and 150 mg/kg/day (2-year study); there were no effects observed in the prostate, including no tumors. In fact, there was no increase in any tumor type in either the rat or mouse. (Ref. 19 at 29). There are numerous studies in the rat of varying duration, and no effects on the prostate have been observed. In the studies available for the 2005 RED, effects on the testes and ovary were identified, hence the request for the two-generation rat reproduction study. The extended one-generation reproductive study is now available and it assessed the prostate. There were no effects on prostate weight and no histopathology findings in the prostate or other male accessory sex organs.

Finally, NRDC argues that studies have shown that 2,4-D causes abnormalities in the estrus cycle (Duffard (1995)), lowers sperm counts and causes other sperm abnormalities (Lerda (1991)), and results in birth defects (Garry (1996)). (Refs. 40, 41, and 42). NRDC has only cited an abstract of the Duffard study, which provides little information. It is clear, however, that the Duffard study used a single dose (70 mg/kg/day) that was at or above the renal clearance level. Garry (1996) investigated the hypothesis that offspring of pesticide applicators might have increased risks of birth anomalies. Although the initial study found an apparent linkage between an area of high phenoxy use and birth anomalies, a more detailed cross-sectional analysis of this area showed no statistically significant correlations between phenoxy use and excess adverse birth or neurodevelopmental effects. (Ref. 43). Lerda (1991) reported an apparent link between exposures to 2,4-D in 32 male applicators and reproductive effects (spermatogenesis). However, these results have little weight for assessing 2,4-D risk because Lerda (1991) did not describe the nature of applicators' exposures in sufficient detail to show that 2,4-D was the causal agent and, if so, the level of that exposure. For example, Lerda (1991) lacked information on the timing/duration of exposure relative to sampling, the use of protective clothing/equipment, the possible presence of manufacturing contaminants given timeframe of study, and exposures to other pesticides. On the other hand, as noted above, the extended one-generation reproduction study assessed 2,4-D's potential impact on the estrous cycle and sperm counts/abnormalities, and no adverse effects were found in these parameters.

Beyond Pesticides, in commenting on the petition, cited Garry (2001) and Malysheva (1997), in addition to studies referenced by NRDC, as supporting NRDC's claim that 2,4-D is an endocrine disruptor. (Refs. 44 and 45). Garry (2001) indicated serum luteinizing hormone (LH) values were correlated with urinary 2,4-D levels in humans, but follicle-stimulating hormone and free and total testosterone were not. Garry (2001) also found 2,4-D levels were not correlated with chromosome aberration frequency in humans but that chromosome aberration frequencies were correlated with the total volume of herbicides applied, including products other than 2,4-D and the use of adjuvants. This study is of limited value because of the small sample size, as noted by the authors, and because it is not clear what other pesticides the individuals were exposed to and how specific components of adjuvant products in the pesticide may have impacted the findings.

According to Beyond Pesticides, the Malysheva (1997) study found that the thyroid glands of laboratory rats were sensitive to 2,4-D as decreases in the thyroid gland transport and hormone production functions, and impairment of hormone iodination in the thyroid were observed after acute exposure. However, no information on the study was presented and the cited article is in Russian and no translation was available. Thyroid function was fully evaluated in the extended one-generation reproduction study. As noted above, the extended one-generation reproduction study examined 2,4-D's potential thyroid effects and established a NOAEL for such effects demonstrating that EPA's prior risk assessment was protective.

In sum, the data cited by NRDC, Beyond Pesticides, and NYDOH do not support changing the quantitative endpoints for assessing the risk posed by 2,4-D for potential endocrine effects given the equivocal results in the studies cited and/or the high doses involved in the studies. Further, the recently-completed extended one-generation reproduction study that was specifically designed to evaluate such effects for the purpose of assessing human risks does not indicate that existing Points of Departure for assessing 2,4-D risks are under protective. Accordingly, EPA concludes that NRDC's petition does not raise sufficient grounds for concern that EPA should consider initiating action that might lead to revocation of the 2,4-D tolerances.

2. *Neurotoxicity*—a. *NRDC Claims.* NRDC asserts that ''the neurotoxic and anti-thyroid effects of 2,4-D make it highly likely that fetuses, infants, and children will be more susceptible to long-term adverse health effects from exposure to this chemical.'' (Ref. 1 at 7). It cites several studies that it claims provide evidence that postnatal exposures to 2,4-D during the critical period for development of the infant brain raise serious scientific concerns. The cited studies by the same group of authors report alterations on the neurotransmitters systems (catecholamine, indoleamine), marked depression in locomotor activity, and moderate circling towards the right side following exposure to 2,4-D via the diet, during gestation, and/or postnatally. NRDC also cites a study reporting decreased serotonin levels were found in various areas of the brain following direct injection of 2,4-D into the brain. Impairment of normal deposition of myelin in the developing brain was reported following exposure via the milk or direct subcutaneous exposure. Several studies were cited to show potential effects of 2,4-D on the brain of neonatal rats exposed lactationally. (Id.).

b. *Public comments.* The New York State Department of Health (NYS DOH) submitted comments in support of the NRDC petition, stating that various toxicological findings associated with 2,4-D in EPA's RED document are weak. (Ref. 29 at 1). The RED, for example, identified specific adverse health effects

of concern, including developmental neurotoxicity and endocrine disruption, and required further studies from the registrants to evaluate these effects. NYS DOH identifies additional studies for the Agency to consider. (Id.).

Beyond Pesticides, in its comments, argues that EPA has underestimated 2,4-D's potential neurotoxic effects, and cites studies which it says show changes to maternal behavior in rats, along with increased catecholamine levels and a drastic decrease in indolamine levels. (Ref. 28 at 3).

The 2,4-D Task Force submitted comments arguing that the studies cited by NRDC do not provide credible or substantive evidence that 2,4-D causes developmental neurotoxicity at exposure levels or routes of administration relevant to humans. (Ref. 26 at 18–21). It notes that in response the reregistration data call-in issued for 2,4-D, the 2,4-D Task Force agreed to conduct an extended one-generation reproduction study in rats of 2,4-D in the diet. The Task Force points out that this study would include assessment of developmental neurotoxicity endpoints, and states that at the time it was preparing comments, there were no dose-related statistically significant indications of developmental neurotoxicity related to 2,4-D exposures, even at dose levels demonstrated to be well above the renal clearance threshold in rat dams and pups. (Id. at 4).

c. *Agency response.* NRDC requests revocation of 2,4-D tolerances because (1) ''[t]he neurotoxic and anti-thyroid effects of 2,4-D make it highly likely that fetuses, infants, and children will be more susceptible to long-term adverse health effects from exposure to this chemical;'' and (2) data cited in the petition ''provide evidence that postnatal exposures to 2,4-D during the critical period for development of the infant brain raise serious scientific concerns.'' (Ref. 1 at 7). However, such claims, as discussed in Unit VII.A.1.c., have the same flaw as NRDC's endocrine arguments: The fact that the young are more susceptible to adverse effects of a pesticide or that data on a pesticide raise ''serious scientific concerns'' do not amount to a showing that aggregate exposure to the pesticide is unsafe, the standard for revoking tolerances. That the young may be more sensitive to a pesticide than adults may be irrelevant to the safety determination if both the young and adults have aggregate exposures below the safe dose. Similarly, that exposure to a pesticide in high dose testing may result in serious effects does not show that aggregate actual exposure to the pesticide, as opposed to exposure levels in laboratory testing, is unsafe. Again, NRDC has failed to address all the steps in the risk assessment process necessary to a safety determination. As with its endocrine claim, NRDC has done no more than allege 2,4-D has the potential to cause harm. Accordingly, NRDC's claim that the 2,4-D tolerance should be revoked due to 2,4-D's neurotoxic effects is denied due to a failure to allege facts sufficient to meet the statutory standard for revocation.

Despite the inadequacy of petitioners' neurotoxicity claims, EPA has examined the evidence cited by petitioners for the purpose of evaluating whether the evidence raises sufficient grounds for concern regarding 2,4-D that EPA should consider initiating action that might lead to revocation of the 2,4-D tolerances.

In the 2005 RED, EPA identified neurotoxic effects in the acute and subchronic neurotoxicity studies as well as other studies. These effects included clinical signs (e.g., ataxia, tremors, decreased motor activity) as well as neuropathology (e.g., retinal degeneration); however, these effects were only seen at doses above the level of saturation of renal clearance. Given these neurotoxic effects, EPA issued a data call-in for a developmental neurotoxicity study and retained the FQPA safety factor for the protection of infants and children in the absence of that data. To address this data gap, the Task Force submitted an extended one-generation reproduction study with a developmental neurotoxicity component.

The extended one-generation reproductive toxicity study on 2,4-D assessed developmental neurotoxicity at three dose levels up to the saturation level for renal clearance. (Ref. 31). The potential for neurotoxic effects was assessed using numerous parameters. First, the study used a Functional Observation Battery (FOB) to evaluate whether there were clinical signs of neuorotoxicity. This FOB included cage-side, hand-held, and open-field observations of behavior, and measurements of body weight, rectal temperature, grip performance, and landing foot splay. Second, the study used an automated system for measuring motor activity. Third, the study assessed the startle response to auditory stimuli. Finally, a neuropathological exam was conducted on the brain (including the cerebrum, thalamus/hypothalamus, cerebellum and medulla), spinal cord, dorsal root ganglia, dorsal and ventral roots, peripheral nerves, and skeletal muscle. The examination of the brain included assessment of brain weight and gross measurements, microscopic measurements (morphometrics), and brain myelin. There were no treatment-related adverse effects on any of the numerous parameters assessed across life stages, which included multiple neurotoxicity-related endpoints similar to those in the studies cited by NRDC (*e.g.,* an assessment of motor activity, myelination, and maternal behavior). Thus, the extended one-generation reproduction study, in conjunction with all of the other data bearing on neurotoxicity, supports EPA's risk assessment of 2,4-D and provides no indication that EPA should consider initiating action to revoke 2,4-D tolerances.

The studies relied upon by NRDC in the portion of its petition addressing neurotoxicity do not suggest that EPA has not protected against potential neurotoxic effects of 2,4-D. Similar to its approach to endocrine effects, NRDC appears to take the position that the mere fact that 2,4-D could have a neurotoxic effect shows that it is unsafe. Consistent with this approach, NRDC, for the most part, relies on mechanism of action studies that involve a single, high dose as opposed to risk assessment studies designed to investigate a chemical's dose response relationship across a wide range of doses. NRDC relies on the following 2,4-D studies: A study in fish showing adverse brain effects (Ton (2006)); a study in rats showing delays in brain development and abnormal behavior patterns (Evangelista (1995)); a study in rats showing neurotoxic effects on the basal ganglia in the brain (Bortolozzi (2001)); and three studies that appear to show impairment of normal deposition of myelin in the developing brain (Rosso (2000); Duffard (1996); Konjuh (2008)). (Refs. 46, 47, 48, 49, 50, and 51). Each of these studies, however, either involve testing at levels above the renal saturation dose or use routes of exposure or methodology inappropriate to human risk assessment or both.

Ton (2006) was a research study investigating the use of zebrafish as a screening assay for identifying whether a chemical has the potential for neurotoxic effects and requires further testing in mammalian systems. For 2,4-D, appropriate testing in mammals is available, including a developmental neurotoxicity study in rats. Further, Ton only found potential neurotoxic effects at dose levels exceeding the dose concentration that is lethal to 50 percent for zebrafish (referred to as the LC_{50} (lethal concentration)). Other limitations in this study are outlined in the Task Force's comments. (Ref. 26 at 18–19).

Evangelista (1995) used doses of 50 and 100 mg/kg/day of 2,4-D. These doses meet or exceed the renal saturation level. Further compromising interpretation of this study is the fact that the identified neurotoxic effects were only detected when exposure to 2,4-D was combined with doses of amphetamine. NRDC also inaccurately describes this study as involving young rats when, in fact, adult animals were tested.

Bortolozzi (2001) investigated potential neurotoxic effects of 2,4-D by directly injecting 2,4-D into different brain areas of rats. Such a methodological approach is not useful for risk assessment because it does not correspond to the routes of exposure for humans to 2,4-D and, as noted, appropriate route of exposure studies are available for 2,4-D. Further, the Task Force described the doses in the study as being 40- to 100-fold greater than the concentration in the brain after systemic treatment.

Rosso (2000), Duffard (1996), and Konjuh (2008) each involved testing at 70 or 100 mg/kg/day. These doses exceed the renal saturation level. Other limitations in these studies are detailed in the Task Force's comments. (Ref. 26 at 20–21).

Other studies cited by NRDC and Beyond Pesticides that address neurotoxicity have similar weaknesses. Ferri (2007), Garcia (2004), and Garcia (2008) used doses exceeding the renal saturation level. Sturtz (2008) found effects on maternal care but these effects were not duplicated in the extended one-generation reproduction study and the effects were not associated with any adverse effects in the pups.

Studies cited by the New York State Department of Health in comments are similar to the NRDC studies in that they are studies investigating mechanism of toxicity and were conducted at doses exceeding the renal saturation level.

In sum, EPA does not disagree with NRDC that 2,4-D, if administered at high enough doses, may result in neurotoxic effects in animals. However, the data regarding neurotoxicity relied upon by NRDC, or cited by commenters, does not indicate that the existing Points of Departure for evaluating 2,4-D risks are underprotective. Similarly, the extended one-generation reproduction study confirms the protectiveness of the existing Points of Departure as to neurotoxic effects. Accordingly, EPA concludes that NRDC's petition does not raise sufficient grounds for concern that EPA should consider initiating action that might lead to revocation of the 2,4-D tolerances.

3. *Mutagenicity*—a. *NRDC claims.* NRDC claims that in comments submitted to EPA on the 2004 human health risk assessment for 2,4-D risk assessment, it pointed out that EPA disregarded a number of studies that highlight the mutagenicity and genotoxicity of 2,4-D. (Ref. 1 at 7). NRDC states that at the time of the RED, EPA responded that it was under no obligation to consider these studies because ''positive findings are always confined to samples of 2,4-D formulations and not the pure substance.'' (Id. at 7). NRDC claims EPA's response in 2005 was deficient first because nothing confines EPA only to consider studies that examine the pure substance (that is, the active ingredient). Second, recent studies involving just the active ingredient do indeed confirm the mutagenicity and cytotoxicity findings of the studies ignored by EPA. In light of these points, NRDC argues that EPA should not allow the continued use of 2,4-D.

NRDC also cited four studies it claims confirm the mutagenicity and cytotoxicity of 2,4-D. (Id. at 8). Two of these were published since the EPA RED was finalized and two were published shortly beforehand but were not cited in the risk assessment. Three of these studies examined just the active ingredient 2,4-D, while the third used a commercial 2,4-D product containing a mixture of 2,4-D and various inert ingredients. NRDC states that these results must be considered in determining whether users of these products are being exposed to potential toxicity.

NRDC also argues that apart from these new data, the discussion of the carcinogenicity and mutagenicity of 2,4-D that was provided by EPA in the 2004 risk assessment was inadequate because EPA failed to acknowledge numerous additional positive genotoxicity studies in the peer-reviewed scientific literature that together indicate that 2,4-D formulations are likely to be cytotoxic and mutagenic. (Id. at 9). According to NRDC, research in the open scientific literature have reported oxidant effects of 2,4-D, indicating the potential for cytotoxicity or genotoxicity. NRDC argues that another finding that may provide a unifying explanation of some of the data on 2,4-D and lymphoma is that the herbicide may increase lymphocyte replication. (Id.)

b. *Public comments.* The 2,4-D Task Force submitted comments stating that 2,4-D is not mutagenic. (Ref. 26 at 4). The Task Force claims that for reregistration, 2,4-D acid, plus eight different 2,4-D derivatives have been tested in a battery of mutagenicity tests which are comprised of a total of 28 studies. All of these studies were negative (non-mutagenic). (Id. at 22). While the Task Force acknowledges that some positive mutagenicity studies occur, it argues that the weight of the evidence overwhelmingly supports a conclusion of minimal or no concern for mammalian mutagenicity for 2,4-D. The Task Force notes that several inherent characteristics of 2,4-D suggest that there is a very low potential for it to cause mutagenic effects: The half-life of 2,4-D in humans is less than 12 hours; 2,4-D does not metabolize or transform; 2,4-D is excreted unchanged; and it does not accumulate. (Id. at 23).

Beyond Pesticides submitted comments to support the petition by NRDC requesting the cancellation of all 2,4-D product registrations and the revocation of all tolerances, stating that the Agency underestimated 2,4-D's mutagenic effects. (Ref. 28 at 1). Beyond Pesticides cites a study on plants which shows the induction and frequency of certain point mutations by 2,4-D (and dicamba), suggesting that these point mutations are important as they are frequently associated with various types of cancer. Beyond Pesticides also cites a study which they claim indicates 2,4-D is cytotoxic and induces apoptosis via direct effect on mitochondrial membranes. (Id. at 2–3).

NCASI, in its comments, asserts that the overwhelming weight of evidence indicates that 2,4-D is neither mutagenic nor genotoxic. NCASI states that tests of mutagenicity and genotoxicity are important in this context as indicators of the potential for carcinogenicity. They point out that the International Commission for Protection Against Environmental Mutagens and Carcinogens, categorization of a chemical as genotoxic is not an *a priori* indication of a health hazard. They note that there is a large body of evidence and broad scientific consensus that 2,4-D is not a carcinogen. (Ref. 27 at 4)

c. *Agency response.* NRDC's petition argues that the 2,4-D tolerances should be revoked on several grounds related to mutagenicity. First, NRDC claims that EPA did not adequately address NRDC's comments on the RED risk assessment regarding 2,4-D's mutagenicity and that subsequent data confirm the accuracy of NRDC's comments. NRDC argues that ''[i]n light of these points, EPA should not allow the continued use of 2,4-D.'' (Ref. 1 at 7). Second, NRDC asserts that ''the discussion of the carcinogenicity and mutagenicity of 2,4-D that EPA does provide in the [RED] risk assessment is wholly inadequate.'' (Id. at 8). NRDC argues that this inadequate discussion led to EPA ''failing to assess fully the

risk of cancer in humans from [2,4-D] exposure and failing to protect humans from this risk adequately.'' (Id. at 10)

These assertions do not, however, provide a sufficient basis for revoking the 2,4-D tolerances. The ground for seeking revocation of a tolerance is a showing that the pesticide is not ''safe.'' Claiming that EPA improperly conducted its reassessment of the 2,4-D tolerances by failing to consider certain data bearing on its decision on mutagenicity or carcinogenicity does not amount to a showing that the tolerance is unsafe. Neither is the allegation that 2,4-D is a mutagen or the derivative claim that EPA's failure to adequately consider mutagenicity data results in its ''failing to assess fully the risk of cancer'' sufficient to show that the 2,4-D tolerances are unsafe. As explained in Unit VII.A.1.c., with regard to its endocrine and neurotoxic claims, to properly assert grounds for revocation of a tolerance, NRDC must allege facts showing that aggregate exposure to 2,4-D poses an unsafe mutagenic risk. That, it has not done. As to mutagenicity, NRDC merely alleges that 2,4-D can cause mutagenic harm. As to carcinogenicity, NRDC's claims are even more amorphous. It argues that because EPA failed to consider 2,4-D's alleged mutagenic effects, it thereby failed to ''assess fully,'' and adequately protect against, 2,4-D's cancer risks. As to neither mutagenicity nor cancer has NRDC addressed what the safe level of exposure to 2,4-D is for humans or alleged that the exposure levels of humans to 2,4-D exceed this safe level. Accordingly, NRDC's claim that the 2,4-D tolerance should be revoked due to 2,4-D's mutagenic effects or its failure to assess 2,4-D's cancer risk in light of these mutagenic effects are denied due to a failure to make a proper claim for revocation by, at the very least, alleging facts that, if proven, would meet the statutory standard for revocation.

Despite the inadequacy of petitioners' mutagenicity claims, EPA has examined the evidence cited by petitioners for the purpose of evaluating whether the evidence raises sufficient grounds for concern regarding 2,4-D that EPA should consider initiating action that might lead to revocation of the 2,4-D tolerances.

EPA requires the submission of mutagenicity data on pesticides to assess a pesticide's potential to cause heritable mutations that may contribute to cancer or other genetic diseases. (Refs. 52 and 53). Mutagenicity analysis has been directed primarily at investigating the mechanism of action with regard to toxic endpoints, particularly cancer. (Refs. 54 and 55). It should be noted that EPA's data requirements on mutagenicity have evolved over the years. Whereas earlier data requirements identified a wide range of genotoxicity tests, EPA's current testing requirements focus on tests for mutagenic effects, i.e., heritable changes in DNA that could potentially lead to disease. It is important to point out that genotoxicity assays include any kind of study that evaluates cellular functions involving gene damage, or interference with gene replication and repair. Mutagenic effects are a subset of genotoxic ones. The difference between the terms ''genotoxicity'' and ''mutagenicity'' is that ''genotoxicity pertains to all types of DNA damage (including mutagenicity), whereas mutagenicity pertains specifically to mutation induction at the gene and chromosome levels.'' (Ref. 56). Importantly, ''[w]hile genotoxic effects may be transient, mutagenic effects are persistent.'' (Id.). So unlike mutagenic effects which are generally non-repairable, and permanent, other genotoxic effects generally do not exhibit these same traits. Consequently, non-heritable genotoxic effects do not necessarily lead to adverse effects in a whole organism, and, for the same reason, are also not a reliable predictor of such effects. While genotoxicity data can help to inform an understanding of the adverse outcome pathway for a chemical, by themselves, EPA does not accord much weight in risk assessment to genotoxicity data that fail to show heritable effects.

EPA's current data regulations require, as to mutagenicity testing, a bacterial reverse mutation assay, an *in vitro* mammalian cell assay, and an *in vivo* cytogenetics test. 40 CFR 158.500(d). The recommended study guidelines indicate a preference for tests directed at identifying not merely genotoxicity but mutagenic effects in terms of gene mutation or chromosomal aberrations. (40 CFR 158.500(d) (test notes 31 and 32); (Refs. 57, 58, 59, 60, and 61). Omitted from the data regulations is the former requirement pertaining to ''other genotoxic effects * * * [such as] numerical chromosome aberrations, direct DNA damage and repair, mammalian cells transformation, target organ/cell analysis.'' 40 CFR 158.340(a) and (b)(22) (2007). The bacterial reverse mutation assay (commonly known as the Ames test) is designed to detect point mutations in genetic material. As the guideline indicates: ''Point mutations are the cause of many human genetic diseases and there is substantial evidence that point mutations in oncogenes and tumour suppressor genes of somatic cells are involved in tumour formation in humans and experimental animals.'' (Ref. 57). For the *in vitro* mammalian cell assay, the guidelines recommend either individual assays directed at detecting gene mutations, (Ref. 58), or structural chromosome aberrations, or both endpoints in a single assay. (Ref. 59). For an *in vivo* cytogenetics test, the regulations recommend either an assay for the detection of structural chromosome aberrations in bone marrow cells of animals, usually rodents, (Ref. 60), or an assay for the detection of cytogenetic damage which results in the formation of micronuclei containing lagging chromosome fragments or whole chromosomes. (Ref. 61). Between the *in vitro* and *in vivo* tests, the latter carry the greater weight in assessing mutagenic potential because *in vitro* tests do not capture how a living body responds to a toxic insult, including its ability to detoxify putative mutagens and genotoxicants. (Ref. 54 at 2–34; and Ref. 62).

EPA has a large body of mutagenicity and genotoxicity data for 2,4-D. Those data show little to no concern for heritable mutagenic effects in mammals but some evidence supporting 2,4-D's potential to cause genotoxic effects. More specifically, these data show: (1) That 2,4-D is negative in bacterial mutation assays; (2) some positive results for mutagenicity in assays in yeast, plants, and insects; (3) negative results for mutagenicity in *in vivo* studies in animals; and (4) mixed results for mutagenic and genotoxic results in *in vitro* tests in mammalian cells. EPA summarized the results in the last formal cancer assessment for 2,4-D in 1997 as follows:

> The mutagenic potential of 2,4-D has been extensively evaluated in a range of *in vivo* and *in vitro* assays that have included tests with human cells. Ames tests, with and without metabolic activation, were consistently negative. Negative results were also seen in a mouse bone marrow micronucleus and UDS assays in rat hepatocytes. Conflicting results were obtained in *Drosophila;* positive effects were seen in larvae, while negative results were seen in adults after feeding or injection. Conflicting results were also seen in *in vitro* mammalian cell cytogenetics assays; 2,4-D was negative for structural chromosomal damage up to an insoluble level but positive in the presence of metabolic activation at high doses. The positive evidence, however, tends to be weak and generally not supported by the data from *in vivo* cytogenetic assays. 2,4-D also was nonactive in mammalian cell DNA repair assays. Overall, the pattern of responses observed in both *in vivo* and *in vitro* tests indicated that 2,4-D was not mutagenic (although some cytogenetic effects were seen).

(Ref. 16 at 17).

Mutagenicity was considered as part of the weight of the evidence determination on cancer. EPA concluded that 2,4-D should be classified under Category D—Unclassifiable as to Human Carcinogenicity. This determination was based primarily on the finding that in the two most recent rodent studies there were no compound-related statistically significant increases in tumors in either rats or mice and the conclusion that epidemiology data failed to show a cause-and-effect relationship between 2,4-D exposure and cancer. The weak evidence on genotoxicity was not sufficient to outweigh the absence of positive findings on tumor development in rodent carcinogenicity studies or epidemiology studies. Similar conclusions on mutagenic (and carcinogenic) potential of 2,4-D have been reached by independent science review panels. In 1994, a joint committee of EPA's SAB and SAP concluded that:

> The conflicting cytogenetic results do not provide evidence for genotoxicity of 2,4-D. Studies with positive results have significant experimental deficiencies as noted above, thus limiting the value of these studies for assessing genotoxicity. Therefore, although there are serious data deficiencies, the currently available evidence suggests that 2,4-D is non-genotoxic. The lack of genotoxicity may reduce the concern for potential carcinogenicity of 2,4-D, but it is recognized that not all carcinogens are necessarily genotoxic.

(Ref. 15 at 19) (See Refs. 13 and 14 (earlier meeting of the FIFRA SAP disagreeing with EPA's conclusion that there was limited evidence supporting a carcinogenic designation for 2,4-D and instead concluding that 2,4-D should be classified no higher than Category D because evidence was only equivocal)).

Since the 1997 EPA cancer assessment, the 2,4-D registrant has submitted a series of mutagenicity tests with 2,4-D and its various metabolites. The tests included bacteria mutation assays, and *in vitro* mammalian assays investigating gene mutation and chromosomal aberrations. These tests were uniformly negative. Further, in its comments on the petition, the Task Force offers a plausible hypothesis for the predominantly negative findings for 2,4-D in mutagenicity testing. The Task Force notes that 2,4-D does not metabolize or transform in the body and is rapidly excreted in an unchanged form. This lack of reactivity supports a conclusion of low mutagenic potential.

NRDC in its petition has cited a number of positive mutagenicity and genotoxicity studies. Taken together, these studies do not have a significant effect on the balance of the weight of evidence on mutagenicity and genotoxicity as summarized by EPA in its last cancer assessment.

Studies cited by NRDC and Beyond Pesticides do not significantly add to the weight of evidence supporting a mutagenicity conclusion for several reasons. First, NRDC only referenced one *in vivo* study (Madrigal-Bujaidar (2001)) and that study only looked at a genotoxic, as opposed to a mutagenic, endpoint (sister chromatid exchange). (Ref. 63). Further diminishing the weight of this study is the fact that the authors described it as only showing ''weak positive results,'' and concluded that given the ''moderate genotoxic effect produced by 2,4-D, * * * the hazard for the general population appears to be small.'' (Id.). Second, many of the studies cited by NRDC looked only at DNA damage (sister chromatid exchange), (Refs. 64 and 65), not mutagenic effects, and at least two of these studies showed marginal positive results at best (Arias (2003, 2007)). (Refs. 66 and 67). Although two studies cited by NRDC did show a mutagenic (chromosomal aberration) response in an *in vitro* mammalian cell assay, (Zeljezic (2004); Venkov (2000)), two other *in vitro* studies were either negative (Figg (2000) (authors conclude findings do not support a ''genotoxic pathway'') or marginal (Holland (2002)). (Refs. 68, 69, 70, 71, and 72). As noted above, conflicting results in *in vitro* testing for 2,4-D was previously recognized by EPA. Other tests (Tuschl (2003); Bukowska (2003)) showed cytotoxicity but studies on cytotoxicity alone do not provide evidence of genotoxicity. (Refs. 73 and 74). Finally, NRDC and Beyond Pesticides cited studies confirming EPA's earlier conclusion regarding positive mutagenic effects in yeast and insects (Venkov (2000); Tripathy 1993). (Refs. 75 and 76). Such studies are entitled to less weight compared to mammalian studies, particularly *in vivo* mammalian studies. Finally, NRDC's arguments regarding the reported oxidant effects of 2,4-D do not change the weight of evidence as to 2,4-D's cancer classification because the primary evidence on cancer—rodent carcinogenicity studies and human epidemiology data—do not support a positive cancer finding.

Accordingly, EPA concludes that NRDC's claim concerning mutagenicity does not raise sufficient grounds for concern that EPA should consider initiating action that might lead to revocation of the 2,4-D tolerances.

4. *Body weight.* a. *NRDC claim.* In a section of its petition addressing exposure to 2,4-D through maternal milk, NRDC argues that EPA chose an incorrect POD for addressing short-term oral exposure and should ''redo the short-term oral risk assessment * * *.'' (Ref. 1 at 11). NRDC cites a study conducted in rats by Sturtz (2006) which identified 15 mg/kg/day as a LOAEL based on ''adverse effects on breastmilk composition and on bodyweight in offspring * * *.'' (Id.; Ref. 77) NRDC contrasts this value with the 25 mg/kg/day NOAEL that EPA used as the POD in assessing short-term oral risk.

b. *Public comments.* The Task Force responded that the results in the Sturtz (2006) study were not replicated in a recent study performed under Good Laboratory Practice conditions. (Ref. 26 at 27 and Ref. 78). In this study, according to the Task Force, 2,4-D significantly decreased pup body weights at dose levels above the renal saturation level but not at lower levels.

c. *Agency response.* NRDC's request on pup body weight is for EPA to ''redo'' the short-term oral risk assessment using a lower POD based on a LOAEL rather than a NOAEL. Although this argument, like NRDC's other claims as to 2,4-D toxicity, appears to state an insufficient basis, on its face, for revoking the 2,4-D tolerances, EPA concludes that it is qualitatively different than NRDC's claims regarding endocrine disruption, neurotoxicity, and mutagenicity. Those claims did not address the statutory standard for revocation. Although not clearly articulated by NRDC, EPA can piece together a sufficient allegation supporting revocation with regard to NRDC's body weight claim: Namely, that, if EPA recalculated 2,4-D short-term risk using a revised POD of a LOAEL of 15 mg/kg/day, it would find that short-term aggregate exposure to 2,4-D exceeds the safe level.

Nonetheless, while EPA has interpreted NRDC's allegation on body weight as a legally sufficient ground for revocation, EPA denies NRDC's claim on body weight because the cited evidence does not support NRDC's allegation. EPA disagrees with NRDC's allegation that EPA has misidentified the POD for adverse effects on pup body weight. The recent extended one-generation rat reproduction study comprehensively evaluated effects on pup body weights from pre- and post-natal exposures to 2,4-D. (Refs. 31). In this study, intended doses were: 5 mg/kg/day for the low dose; 15 mg/kg/day for a mid dose; and 40 mg/kg/day for males and 30 mg/kg/day for females for a high dose. Actual calculated doses in post-natal pups following weaning (PND

21) were considerably higher with four of the five subsets within the study (Sets 1a, 1b, 2a, and 2b) receiving almost double the intended dose for the post-lactation period. Actual doses can differ from intended doses when experimental animals consume different amounts of food than projected. Body weights were tracked for all pups in the study from PNDs 1–21. There were between 24 and 28 litters per dose group with roughly 10 pups per litter which translates to roughly 250 pups per dose group. Looking across all pups in the study, no statistically significant body weight decreases were seen for males or females at any dose level for PND 1–21. A smaller subset of pups (Set 1a—20 pups per dose), was specifically examined as to general toxicity effects including body weight effects. In that subset, statistically significant effects were seen in the high dose group for males generally between PNDs 28 and 69. No statistically significant body weight effects were seen in males at the low or mid doses or at the high dose prior to PND 28. No statistically significant body weight effects were seen in females at any dose on any day. Other subsets (Sets 1b, 2a, 2b, and 3) for which dosing continued past at least PND 55 showed no statistically significant decrease in body weight at the conclusion of the study. Similar results were found in an earlier two-generation study with 2,4-D. (Refs. 79 and 80). In that study, the intended doses were: 5 mg/kg/day for the low dose; 20 mg/kg/day for a mid dose; and 80 mg/kg/day for a high dose. Actual calculated doses in post-natal pups after weaning were 7–14 mg/kg/day, 26–48 mg/kg/day, and 76–133 mg/kg/day. Body weight effects were seen at the mid-dose at PND 28 and at the high dose. No effects on body weight were observed prior to weaning at the mid-dose. Additionally, in the range-finding study for the extend one-generation reproduction study, similar effects regarding pup body weight were seen—namely, statistically significant body weight decrements were only observed at the high dose ((1,000 ppm) 123 mg/kg/day for males (calculated on PND 35) and (800 ppm) 121 mg/kg/day for females (calculated on PND 35)). (Ref. 78).

The Sturtz (2006) study reports decreases in body weight gain or absolute body weight at doses as low as 15 mg/kg/day on PNDs 6 through 16.[2] These results are not consistent with the prior two-generation reproduction study and were not replicated by either the range-finding study for the extended one-generation reproduction study or the one-generation study itself. Moreover, there are several reasons to give the Sturtz (2006) study less weight than the results of the other three studies. First, the extended one-generation and two-generation study were conducted under EPA's Good Laboratory Practice Standards regulations, see 40 CFR part 160, and all underlying data for these studies are available for review. Further, the extended one-generation study is considered state-of-the-science because it considered the toxicokinetic profile of 2,4-D as it makes its way from the mother to the offspring, as well as a variety of other endpoints that are considered more sensitive than body weight (e.g., hormones, hematology, clinical chemistry, etc). The toxicokinetic aspect is particularly important because, based on the toxicokinetic profile, the doses in the extended one-generation reproduction study were adjusted during the lactational period to prevent excessive dosing both to the maternal rat and to the pups during early lactation and due to a ''double exposure'' when pups are both nursing and starting to consume diet (as in the case on PND 16). Adjustments to the diet were also performed in the Sturtz study, although the procedures used were different and may, to some extent, explain the results in the Sturtz study compared to the extended one-generation reproduction study. Second, the Sturtz (2006) study does not show a clear dose response effect. Although there is a greater effect on body weight comparing the lowest and highest doses, the body weight effects are essentially the same in the lowest two doses despite significant differences in the doses and that same phenomena is seen with regard to the highest two doses. Third, the extended one-generation reproduction study examined a much larger sample of pups. Roughly four times as many pups were evaluated in the extended one-generation reproduction study from PNDs 1–21 compared to the Sturtz study, and the Sturtz study evaluated no pups after PND 16. Finally, NRDC infers that the Sturtz study identified an ''adverse effect'' on the composition of maternal milk. However, changes in the composition in maternal milk may provide an explanation for effects seen in the pups but do not constitute an adverse effect independent of effects in the pups.

Thus, to the extent NRDC's petition argues that the Sturtz study showed the 2,4-D tolerances to be unsafe, that claim is denied.

B. Exposure

1. *Aggregate exposures and risk—residential use*—a. *NRDC claims.* In its petition, NRDC restates its comments submitted in 2002 and 2004 concerning the Agency's aggregate assessment (Ref. 1 at 11). In its comments submitted in 2002 and 2004, NRDC claims that EPA failed to conduct adequate aggregate risk assessment due to outstanding data gaps and missing information, and that EPA did not consider exposure through drift, migration of contaminated soil, or residential track-in exposures. (Refs. 23 and 24). In its comments, NRDC cites two studies (Nishioka (1996 and 2001)) in support of these comments that pertain to track-in exposures. (Refs. 81 and 82).

b. *Public comments.* There were no public comments received on this issue.

c. *Agency response.* In addition to the generalized claims regarding inadequate assessment of aggregate exposure in the RED risk assessment, NRDC does specifically allege that ''[t]he use of 2,4-D in and around the home could itself exceed appropriate risk levels if properly calculated.'' (Ref. 24 at 28). If the evidence adduced by NRDC substantiates this point—the Nishioka studies (1996 and 2001)—this claim would be sufficient grounds for revocation of 2,4-D tolerances.

In response to NRDC's claims regarding the level of 2,4-D exposure from residential use, the Agency reviewed both Nishioka studies (1996 and 2001) to ascertain if the risk assessment completed for 2,4-D was protective. (Ref. 83 at 13).

Residential exposure to 2,4-D results from its use on turf in residential environments. In the RED risk assessment this use pattern was evaluated using a screening level methodology that considers direct contact by toddlers with treated turf. Toddlers are considered the most highly exposed group in the population to turf uses because their behavior patterns (e.g., playing on turf, mouthing of hands and other objects) lead to both increased dermal and non-dietary ingestion exposures. The screening methodology assumes that these behaviors co-occur and also aggregates exposures from the pesticide in food and water. For 2,4-D, this screening methodology did not indicate a risk of concern even taking into account that the RED risk

[2] The study does not make clear whether it was reporting decrements in body weight gain (the amount of weight gained between designated time periods) or absolute body weight. Body weight is generally regarded as the more important measure because decrements in body weight gain, which is a calculated value and may be misleading, may occur even though the pup is otherwise within normal body weight levels.

assessment retained the full 10X FQPA safety factor due to missing data on pre- and post-natal toxicity.[3]

Dusts are thought by some to possibly contribute more than negligible levels to potential exposures in indoor environments but a methodology has not been developed which definitively establishes a link between levels in dust with a clearly defined exposure pathway. This construct was discussed extensively at a 2009 meeting of the FIFRA SAP related to the revisions of the EPA's Standard Operating Procedures for Residential Exposure Assessment. (Ref. 84). The conclusions of that panel were that insufficient information is currently available to definitively link residues in dusts to specific exposure pathways. Nonetheless, to examine whether 2,4-D contamination of indoor dust might significantly alter the RED risk assessment, EPA considered how the indoor residue values in the Nishioka studies would affect the risk assessment. EPA assumed for screening purposes that toddlers consume 100 mg/day of dust containing the highest 2,4-D concentration found in Nishioka studies (67 micrograms/gram (µg/g)). The 2,4-D levels in dust in the Nishioka studies were generally much lower than 67 µg/g (e.g., 1996 maximum is 4.85 µg/g, and 2001 median is 10 µg/g). The value of 100 mg/day for dust consumption is drawn from the EPA's Child Specific Exposure Factors Handbook (Ref. 85), and is the same value assumed for soil consumption. This value was also used in the Nishioka studies. Additional conservatisms in this screening assessment are the assumptions that (1) exposures from dust residues are assumed despite the uncertainties noted in the 2009 FIFRA SAP Report; and (2) 2,4-D residues do not decline over time even though 2,4-D is known to dissipate quickly. (Ref. 84 at 26 and Ref. 86). Based on these assumptions, margins of exposure range from approximately 32,000 to 150,000 depending upon whether the duration of exposure considered is acute-, short- or intermediate-term. (Ref. 30 at 66). As such, use of this highest dust concentration value would not impact the findings of the current risk assessment. If it is further assumed that dusts persist in impacted residences in such a way that ingestion of the highest concentration would occur in a chronic exposure pattern and that the highest noted concentration in dust would never dissipate, which is counter-intuitive given how 2,4-D is used and its known rapid dissipation characteristics, risks are still not of concern. In such situations, dust would be the predominant source for chronic exposures but margins of exposure still would exceed 11,000 based on the chronic dietary POD (5 mg/kg/day). (Ref. 30 at 66). It should also be noted that Nishioka (1996) indicated that such exposures could be chronic in nature after a single application of 2,4-D, but this is viewed by EPA as unlikely due to a lack of empirical information to support such a supposition. Nishioka (1996) projected that 2,4-D would be found in residential carpet dust up to 1 year later based on short-term track-in sampling. However, the value estimated by Nishioka (0.5 µg/g) is two orders of magnitude less than the value used in the extremely conservative assessments described above. Given that these unrealistic and high-end assumptions yield MOEs greater than 10,000, EPA concludes that the cited data do not support NRDC's allegation that ''[t]he use of 2,4-D in and around the home could itself exceed appropriate risk levels if properly calculated.'' To the contrary, even assessing exposure using unrealistic, high-end values for 2,4-D, levels in dust indicates that residential dust exposures to 2,4-D are a relatively minor exposure. NRDC's claim regarding track-in exposures is denied.

Finally, it should be noted that the Agency is currently in the process of evaluating the state of the science related to the exposure pathways from indoor dust as illustrated by the SAP review of residential methods and an additional review related to exposures from volatilization. Additionally, EPA is developing more definitive methods focused on addressing and characterizing potential exposures from chemical trespass. These efforts were recently described in a 2011 meeting of the Pesticide Program Dialogue Committee. (Ref. 87). Once final, any potential modifications to methods impacting residential risk assessment will be accounted for in the upcoming registration review process for 2,4-D.

2. *Exposure through maternal milk*—

a. *NRDC claims.* NRDC asserts that EPA failed to include any lactational exposure in its aggregate risk assessment, although it was aware of research demonstrating the potential exposure to 2,4-D from maternal milk. (Ref. 1 at 11). NRDC cites several studies involving lactational exposure to show potential effects of 2,4-D on the brain of neonatal rats exposed lactationally. (Id.). The cited studies provide an assessment of the levels of 2,4-D attained in the milk of the dams and in the plasma and brain of the pups. NRDC also cites studies that it claims ''confirm the lactational exposure and identify adverse effects in the offspring.'' (Id.)

b. *Public comments.* In its comments, the Industry Task Force disputes NRDC's allegation that EPA failed to address 2,4-D exposure from maternal milk. (Ref. 26 at 24–27). The Task Force comments that EPA was aware, when conducting the aggregate risk assessment, that 2,4-D may be present in maternal milk because of the results of animal feeding studies using exaggerated doses of 2,4-D. Further, the Task Force argues that NRDC's claim that EPA failed to include any lactational exposure in its aggregate risk assessment is not correct. According to the Task Force, the Agency used half the limit of detection (LOD) for milk value in its 2005 risk assessment because no detectable residues were found in milk samples over several years of Pesticide Data Program (PDP) monitoring. Thus, the Task Force asserts that EPA assumed that 2,4-D would be present in milk at 0.004 ppm for both acute and chronic exposure (despite it being non-detectable in PDP sampling). (Id. at 26).

The Task Force states that large doses of 2,4-D administered in the Sturtz et al (2000) study cited by NRDC render the study uninformative for human health risk assessment. (Id. at 24). The Task Force cites biomonitoring data from farm families to support its contention that EPA's exposure estimates are reasonable. (Id. at 25).

c. *EPA's response.* Initially, EPA would note that the studies NRDC cited to support its claim that 2,4-D exposure through maternal milk causes adverse effects were considered together with other studies cited by NRDC pertaining to toxicity issues. See Unit VII.A. above.

With regard to human exposure to 2,4-D through maternal milk, NRDC alleges that such exposure occurs and was ignored by EPA despite the fact that it could result in ''potentially significant exposures.'' As discussed in Unit VII.A.1.c., this ground for objection is denied because (1) the standard for revocation is that the tolerance is unsafe not that there are ''potentially significant exposures'' that should be included in an aggregate assessment; and (2) NRDC presents no evidence to support its assertion that potentially significant exposures were excluded from EPA's risk assessment. Accordingly, NRDC's claim that the 2,4-D tolerance should be revoked due to exposure to 2,4-D in human breast milk is denied due to a failure to allege facts sufficient to meet the statutory standard for revocation and a failure to support the allegations that are made.

[3] In 2011, EPA removed the FQPA safety factor because the data gaps were filled by submission of the extended one-generation rat reproduction study.

Despite the inadequacy of petitioners' claim regarding 2,4-D exposure in human breast milk, EPA has examined the evidence cited by petitioners for the purpose of evaluating whether the evidence raises sufficient grounds for concern regarding 2,4-D that EPA should consider initiating action that might lead to revocation of the 2,4-D tolerances.

NRDC is incorrect in asserting that EPA assumed that humans are not exposed to 2,4-D through maternal milk. To the contrary, EPA assumed, in its RED risk assessment, that all milk—whether animal or human—contained 2,4-D at levels that may be present in cow's milk. This is an extremely conservative assumption as it pertains to human breast milk.

Residues in various food forms of cow's milk (e.g., milk fat, nonfat milk solids, etc.) have been accounted for in the dietary exposure assessment based on monitoring data from the USDA Pesticide Data Program (PDP). There were no detections of 2,4-D in any samples, so EPA assumed that all milk contains half the detection limit for 2,4-D. (Ref. 19 at 47). This is a very conservative assumption as it pertains to human breast milk because 2,4-D levels in human breast milk are expected to be significantly lower than residues in cow's milk. Exposure of dairy cattle to pesticides are generally significantly higher than humans as residues in cows' key feed items, such as grass forage, are generally much higher than in human foods. As to 2,4-D, this is certainly the case given that the 2,4-D tolerances for grass (hay) and grass (forage) are 300 and 360 ppm, respectively, while 2,4-D tolerances for various human foods are all much lower—in the single digits or less than 1 ppm (40 CFR 180.142). Grass hay and forage can constitute 60 percent of the diets of beef and dairy cattle. (Ref. 88).

Accordingly, EPA concludes that NRDC's claim regarding exposure to 2,4-D through human breast milk does not raise sufficient grounds for concern that EPA should consider initiating action that might lead to revocation of the 2,4-D tolerances.

3. *Dermal absorption*—a. *NRDC claims.* NRDC asserts that in the final risk assessment, the dermal absorption factor used by EPA (10 percent) was too low. Specifically, NRDC claims that the EPA failed to address the possibility of enhanced dermal absorption of 2,4-D due to the potentially interacting factors of alcohol consumption and application of sunscreen, and/or the insect repellent DEET. (Ref. 1 at 12; Ref. 22 at 1). In its exposure comments on the RED, which NRDC incorporates in its petition, NRDC argued that EPA should increase its dermal absorption factor to at least 14 percent based on a human dermal absorption study by Moody (1992). (Ref. 24 at 16 and Ref. 89). NRDC claimed that such an adjustment of the dermal absorption factor would result in post-application exposures for toddlers exceeding the LOC. (Ref. 24 at 16). In addition, NRDC claims that the Agency did not sufficiently address that using rubber gloves when applying 2,4-D does not afford adequate dermal protection and the effect of 2,4-D soaking into clothing. (Ref. 1 at 13).

b. *Public comments.* In its comments, the Task Force disagrees with NRDC's allegation regarding enhanced dermal absorption due to the interacting factors of alcohol consumption, sunscreen, and DEET. The Task Force argues that the study on which EPA relied to estimate dermal absorption, Feldmann and Maibach (1974), used ''extreme'' conditions. (Ref. 26 at 28 and Ref. 90). According to the Task Force, in this study 2,4-D was applied with acetone which denatures skin and allows for increased absorption. Additionally, the Task Force noted that the skin was not protected and not washed for 24 hours to allow maximum absorption. That study showed absorption of 5.8 percent. The Task Force also cites a recent article, Ross (2005), which summarized numerous dermal absorption studies with 2,4-D. (Ref. 91). According to the Task Force, this study concluded that the available studies showed remarkable agreement and strongly supported the conclusion in the Fledmann and Maibach study.

The Task Force also commented on other issues related to dermal exposure such as the use of rubber gloves by agricultural workers. Those comments are not relevant to the FFDCA portion of NRDC's petition and are thus addressed elsewhere.

c. *EPA's response.* For the purposes of responding to the portion of NRDC's petition that requests EPA to revoke tolerances, EPA will respond to issues related to residential exposure here. Concerns about occupational exposures will be addressed elsewhere.

Unlike most of NRDC's other claims, as to dermal absorption, NRDC alleges grounds that if substantiated would provide grounds for revoking the 2,4-D tolerances. As summarized above, NRDC alleges that EPA has understated dermal absorption and adjustment of dermal absorption factor to the degree supported by Moody (1992) would show a risk of concern (i.e., a lack of safety). (Ref. 24 at 16). In the petition, NRDC's focus shifts from the Moody study to a series of *in vitro* studies investigating the effect of the use of sunscreen and alcohol on 2,4-D dermal absorption. NRDC argues that these studies show that EPA has underestimated dermal absorption. The various combinations of *in vitro* results appear to indicate that dermal absorption was enhanced by up to a factor of about 2.5 while most tested scenarios indicate a factor of 2 or less. (Refs. 92,93,94 and 95). One study used human skin and the results suggest a factor of up to 3 depending upon sunscreen ingredient tested. (Ref. 92). NRDC also claims that use of the pesticide Deet increases dermal absorption of 2,4-D. Here, NRDC turns back to the Moody study but that study actually concluded that ''Deet had no significant effect on total cumulative palmar permeability to this herbicide [2,4-D].'' (Ref. 89 at 245).

EPA believes that its use of a 10 percent dermal absorption value for 2,4-D is protective. EPA's conclusion is supported by an extensive set of high quality human research results. Ross (2005) notes that ''the degree of uncertainty and variability associated with human dermal absorption for 2,4-D is better defined than for virtually any other pesticide * * *.'' (Ref. 91 at 84). EPA principally relied on an *in vivo* human study which showed average human dermal absorption at 5.8 percent. (Ref. 90). EPA also considered four other *in vivo* human studies. (Refs. 89, 96,97 and 98). These studies involved 8 separate trials using a total of 34 participants and had an average dermal absorption value of 5.7 percent. (Ref. 91 at 84, Table 2) To account for potential variability EPA chose a value of 10 percent.

There are several factors that support reliance on these data and demonstrate the reasonableness of EPA's choice of a 10 percent dermal absorption factor. First, the data relied upon by EPA are from *in vivo* human studies. NRDC, with one exception, has cited only to *in vitro* data. EPA generally does not rely on *in vitro* dermal absorption data without corroboration from *in vivo* testing. The critical limitations with *in vitro* dermal absorption testing, such as the lack of an intact vasculature, make it an uncertain guide for risk assessment. The Moody study (1992) did involve *in vivo* human testing but the results of this study were similar to the higher values seen in the human *in vivo* studies considered by EPA. In fact, if the Moody study results from the trial combining 2,4-D and DEET are included in the overall average of dermal absorption from the human studies, the average absorption only increases from 5.7 percent to 6.4 percent. (Ref. 30). Second, the studies considered by EPA involved exposure

conditions that varied based on application site (forearms, hands), topical dose rates (1.7 to 1,100 μg/cm²), form (acid or salt), application media (water, ethanol, acetone), and exposure time. As noted, the overall average dermal absorption value for all of these data combined (N=34), regardless of design, was 5.7 percent. Examination of these variables, particularly the use of different application vehicles and different anatomical sites, is likely to have captured much of the variability measured in the sunscreen and alcohol *in vitro* studies. On this latter point, it is worth noting that NRDC placed particular emphasis on the potential additive effect of sunscreen and alcohol. Yet, the relevant study on this point found that the effect from both sunscreen and alcohol to be no higher than a factor of 2.9 and that was only with an extremely high alcohol dose. (Ref. 92). At the lowest alcohol dose tested in the study, the researchers actually concluded that alcohol had an inhibitory effect on dermal absorption. This low dose, when converted to human consumption amounts, is the equivalent of 7 ounces of 100 proof liquor for women and just slightly less than 9 ounces for men. Third, the data considered by EPA was developed by different researchers at different laboratories. The reproducibility of results across these studies gives them enhanced reliability. As Ross (2005) notes: ''Multiple human studies conducted on the forearm and hand provide remarkably consistent results, especially considering the studies were performed years apart in time, at different laboratories by different personnel on totally different human subjects.'' (Ref. 91 at 84). On the other hand, the *in vitro* studies cited by NRDC all were conducted by the same group of researchers. Finally, the value chosen by EPA for dermal absorption was nearly twice the average value seen in human testing.

Providing further support for the reasonableness of EPA's assumption on dermal absorption are exposure monitoring studies (including epidemiological analyses, environmental measurements, and methodological analyses) cited by NRDC and commenters. (Ref. 30 at 65–69). In fact, many of these studies report exposure levels that are similar to or far below exposures estimated by EPA. For example, NRDC cited results from Lerda (1991), (Ref. 99), prior to the RED, which are similar to those predicted in the 2005 EPA risk assessment for applicators wearing normal work clothing. Current labels require the use of protective clothing and gloves. NRDC also cited median urinary values in children reported by Morgan (2008), (Ref. 100), which are lower than those used to establish risk estimates in the 2005 risk assessment. Other data cited in comments, such as Alexander (2007), (Ref. 101), cited by the 2,4-D Task Force, (Ref. 26 at 30), indicate values much lower than values that would reflect a risk concern for both applicators and their family members according to the 2005 assessment. (Ref. 19 at 57–60).

Accordingly, NRDC's claim regarding dermal absorption is denied.

EPA is currently involved in processes to refine many of its exposure assessment inputs (*http://www.epa.gov/pesticides/science/handler-exposure-data.html*) and to establish better methods for the consideration of epidemiological research into the regulatory process. (See Ref. 102). The Agency is also re-evaluating pesticide risks on a cyclical basis under its registration review process. Given these two efforts, the Agency will further evaluate research related to 2,4-D during registration review. The Agency has also been actively participating in epidemiological research efforts such as the Agricultural Health Study and, as part of this process, will pursue additional information related to 2,4-D and the potential for health effects in potentially exposed populations.

C. Additional Issues Raised in Public Comments

Some comments raised issues beyond the scope of NRDC's petition. For example, Beyond Pesticides, in its comments, claimed that EPA was not justified in removing the FQPA safety factor and had failed to address cumulative effects from 2,4-D and other chlorophenoxy pesticides. (Ref. 28 at 5–6). It is not appropriate for EPA to consider these comments in support of the petition because they have not been subject to the public comment process which is critical to the EPA's administrative review of the petition under section 408(d).

VIII. Statutory and Executive Order Reviews

This action, denies a petition to revoke tolerances, is in the form of an order and not a rule. (21 U.S.C. 346a(f)(1)(C)). Under the Administrative Procedure Act (APA), orders are expressly excluded from the definition of a rule. (5 U.S.C. 551(4)). Accordingly, the regulatory assessment requirements imposed on a rulemaking do not apply to this action, as explained further in the following discussion.

A. Executive Order 12866 and Executive Order 13563

Because this order is not a ''regulatory action'' as that term is defined in Executive Order 12866 entitled ''*Regulatory Planning and Review*'' (58 FR 51735, October 4, 1993), this action is not subject to review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563 entitled ''*Improving Regulation and Regulatory Review*'' (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Since this order is not a rule under the APA (5 U.S.C. 551(4)), and does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

D. Unfunded Mandates Reform Act; and Executive Orders 13132 and 13175

This order denies a petition to revoke tolerances; it does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132 entitled ''*Federalism*'' (64 FR 43255, August 10, 1999) and Executive Order 13175 entitled ''*Consultation and Coordination with Indian Tribal Governments*'' (65 FR 67249, November 9, 2000) do not apply to this order. In addition, this order does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538).

E. Executive Orders 13045, 13211 and 12898

As indicated previously, this action is not a ''regulatory action'' as defined by Executive Order 12866. As a result, this action is not subject to Executive Order 13045, entitled ''*Protection of Children from Environmental Health Risks and*

Safety Risks'', (62 FR 19885, April 23, 1997) and Executive Order 13211 entitled ''*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'',* (66 FR 28355, May 22, 2001). In addition, this order also does not require any special considerations under Executive Order 12898 entitled ''*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''* (59 FR 7629, February 16, 1994).

F. National Technology Transfer and Advancement Act

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

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.* does not apply because this action is not a rule as that term is defined in 5 U.S.C. 804(3).

X. References

1. Petition of Natural Resources Defense Council to Revoke All Tolerances and Cancel All Registrations for the Pesticide 2,4-D (November 6, 2008).
2. Office of Prevention, Pesticides and Toxic Substances, EPA, Memorandum from Elizabeth Resek to Jim Downing, ''Transmittal of Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting Held on March 25–26, 2008 to review and consider the Endocrine Disrupter Screening Program (EDSP) Proposed Tier 1 Screening Battery.'' (June 11, 2008).
3. Marino, T.; Coady, K.; Sosinski, L.; et al. (2010) 2,4-Dichlorophenoxyacetic Acid: A Fish Short-Term Reproduction Assay Using the Fathead Minnow, Pimephales promelas. Project Number: 101026. Unpublished study prepared by Dow Chemical, USA. 155 p. MRID 48317001.
4. Coady, K.; Marino, T.; Thomas, J. (2010) 2,4-Dichlorophenoxyacetic Acid: The Amphibian Metamorphosis Assay Using the South African Clawed Frog, Xenopus laevis. Project Number: 101025. Unpublished study prepared by Dow Chemical, USA. 152 p. MRID 48317002.
5. Schisler, M.; LeBaron, M.; Visconti, N. (2011) (Endocrine Disruptor Screening Program): Evaluation of 2,4-dichlorophenoxyacetic Acid (2,4-D) in an in vitro Androgen Receptor Binding Assay. Project Number: 111111/OCR. Unpublished study prepared by Exponent, Inc. and The Dow Chemical Co. 91p. MRID 48614301.
6. Coady, K.; Sosinski, L. (2011) (Endocrine Disruptor Screening Program): 2,4-Dichlorophenoxyacetic Acid: Evaluation of 2,4-Dichlorophenoxy Acetic Acid in the Human Recombinant Aromatase Assay. Project Number: 111036/OCR 31868 P803. Unpublished study prepared by Exponent, Inc. and The Dow Chemical Co. 98p. MRID 48614302.
7. LeBaron, M.; Schisler, M.; Visconti, N. (2011) (Endocrine Disruptor Screening Program): 2,4-Dichlorophenoxyacetic Acid: Evaluation of 2,4-dichlorophenoxyacetic Acid (2,4-D) in an in vitro Estrogen Receptor Binding Assay. Project Number: 111121/OCR. Unpublished study prepared by The Dow Chemical Co., and Exponent, Inc. 91p. MRID 48614303.
8. LeBaron, M.; Kan, H. (2011) (Endocrine Disruptor Screening Program): Evaluation of 2,4-Dichlorophenoxy Acetic Acid (2,4-D) in an in vitro Estrogen Receptor Transcriptional Activation Assay in Human Cell Line HELA-9903. Project Number: 111043/OCR. Unpublished study prepared by Exponent, Inc., and The Dow Chemical Co. 109p.MRID 48614304.
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List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: April 7, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2012–9106 Filed 4–17–12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229 and 238

[Docket Nos. FRA–2009–0094 and FR–2009–0095, Notice No. 4]

RIN 2130–AC16

Locomotive Safety Standards; Correction

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule; correction.

SUMMARY: FRA is notifying the public that the correct docket number for the Locomotive Safety Standards final rule is FRA–2009–0094. The final rule issued on April 9, 2012, incorrectly identified docket number FR–2009–0095 as the public docket for this rulemaking proceeding. FRA is requesting that all petitions for reconsideration and all comments on any petitions for reconsideration related to this proceeding be submitted to FRA–2009–0094.

DATES: The deadline for petitions for reconsideration of the final rule published April 9, 2012, at 77 FR 21312, remains June 8, 2012. The deadline for comments on such petitions remains July 23, 2012.

ADDRESSES: Petitions for reconsideration or comments on such petitions: Any petitions and any comments to petitions related to Docket No. FRA–2009–0094, may be submitted by any of the following methods: *Web Site:* Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.

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

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulation.gov* including any personal information. FRA wishes to inform all potential petitioners that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the petition (or signing the petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 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.

FOR FURTHER INFORMATION CONTACT: Michael Masci, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC (telephone 202–493–6037).

SUPPLEMENTARY INFORMATION: On April 9, 2012, FRA published a final rule related to locomotive safety standards. *See* 77 FR 21312. The final rule established a public docket to receive petitions for reconsideration in response to FRA's final rule related to locomotive safety standards and comments on such petitions. That final rule mistakenly lists FR–2009–0095 (''incorrect docket'') as the docket number for the final rule. The correct docket number for this proceeding is FRA–2009–94 (''correct docket''). FRA requests that petitions for reconsideration related to the final rule and comments on such petitions be submitted to the correct docket.

Petitions for reconsideration and comments on such petitions submitted to the incorrect docket will be fully considered as part of the locomotive safety standards rulemaking. Because the incorrect docket is listed in the April 9, 2012, **Federal Register** document issuing the final rule, petitions for reconsideration and comments on such petitions submitted to the incorrect docket will remain valid. FRA will transfer all comments and information that are received in the incorrect docket to the correct docket. As such, interested parties that wish to read petitions for reconsideration related to the final rule and comments on such petitions should access docket FRA–2009–0094 to locate them.

Issued in Washington, DC, on April 12, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–9353 Filed 4–17–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2102–02]

RIN 0648–XB176

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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 using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season allowance of the 2012 Pacific cod total allowable catch allocated to trawl catcher vessels in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 15, 2012, through 1200 hrs, A.l.t., June 10, 2012.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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.

The B season allowance of the 2012 Pacific cod total allowable catch (TAC) allocated to trawl catcher vessels in the BSAI is 5,666 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

In accordance with § 679.20(d)(1)(i) and (d)(1)(ii)(B), the Administrator,

Alaska Region, NMFS (Regional Administrator), has determined that the B season allowance of the 2012 Pacific cod TAC allocated to trawl catcher vessels in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,166 mt and is setting aside the remaining 500 mt as incidental catch 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 catcher vessels using trawl gear in the BSAI.

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 Acting 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) and § 679.25(c)(1)(ii) 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 closure of directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 12, 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: April 13, 2012.

James P. Burgess,

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

[FR Doc. 2012–9334 Filed 4–13–12; 4:15 pm]

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Proposed Rules

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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC–2012–0031]

RIN 3150–AJ11

Onsite Emergency Response Capabilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing this Advance Notice of Proposed Rulemaking (ANPR) to begin the process of potentially amending its regulations to strengthen and integrate onsite emergency response capabilities. The NRC seeks public comment on specific questions and issues with respect to possible revision to the NRC's requirements for onsite emergency response capabilities, and development of both new requirements and the supporting regulatory basis. This regulatory action is one of the actions stemming from the NRC's lessons-learned efforts associated with the March 2011 Fukushima Dai-ichi Nuclear Power Plant accident in Japan.

DATES: Submit comments by June 18, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to ensure consideration of comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0031. You may submit comments by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0031. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, contact us directly at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern time) Federal workdays; telephone: 301–415–1677.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Robert H. Beall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3874; email: *Robert.Beall@nrc.gov*.

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I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0031 when contacting the NRC about the availability of information for this notice. You may access information related to this ANPR, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0031.
- *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.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. A table listing documents that provide additional background and supporting information is in Section VIII of this document.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2012–0031 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background: Fukushima Dai-ichi and the NRC Regulatory Response

On March 11, 2011, a magnitude 9.0 earthquake struck off the coast of the Japanese island of Honshu. The earthquake precipitated a large tsunami that is estimated to have exceeded 14 meters (45 feet) in height at the Fukushima Dai-ichi Nuclear Power Plant site (hereinafter referred to as the site or the facility). The earthquake and tsunami produced widespread devastation across northeastern Japan, resulting in approximately 25,000 people dead or missing, displacing tens of thousands of people, and significantly impacting the infrastructure and industry in the northeastern coastal areas of Japan. At the time of the earthquake, Fukushima Dai-ichi Units 1, 2, and 3 were in operation. Units 4, 5, and 6 had been shut down for routine refueling and maintenance activities, and the Unit 4 reactor fuel had been offloaded to the Unit 4 spent fuel pool.

As a result of the earthquake, the three operating units at the site automatically shut down, and offsite power was lost to the entire facility. The emergency diesel generators started at all six units, providing alternating current (AC) electrical power to critical systems; overall, the facility response to the seismic event appears to have been normal.

Approximately 40 minutes after shutdown of the operating units, the first large tsunami wave inundated the site, followed by multiple additional waves. The tsunami resulted in extensive damage to site facilities and a complete loss of AC electrical power at Units 1 through 5, a condition known as station blackout (SBO). One diesel generator remained functional on Unit 6.

Despite the actions of the operators following the earthquake and tsunami, cooling was lost to the fuel in the Unit 1 reactor after several hours, in the Unit 2 reactor after about 70 hours, and in the Unit 3 reactor after about 36 hours, resulting in damage to the nuclear fuel shortly after the loss of cooling.

In the days following the Fukushima Dai-ichi nuclear accident, the NRC Chairman directed the NRC staff to establish a senior-level agency task force to conduct a methodical and systematic review of the NRC's processes and regulations to determine whether, in light of the events in Japan, the agency should make additional improvements to its regulatory system, and to make recommendations to the Commission for its policy direction. This direction was provided in a tasking memorandum dated March 23, 2011, from the NRC Chairman to the NRC Executive Director for Operations (COMGBJ–11–0002) (ADAMS Accession No. ML110950110).

In SECY–11–0093, ''Near-Term Report and Recommendations for Agency Actions Following the Events in Japan'' (ADAMS Accession No. ML11186A959), dated July 12, 2011, the Near-Term Task Force (NTTF) provided its recommendations to the Commission. The staff requirements memorandum (SRM) for SECY–11–0093 (ADAMS Accession No. ML112310021), dated August 19, 2011, directed the NRC staff to identify and make ''recommendations regarding any Task Force recommendations that can, and in the staff's judgment, should be implemented, in part or in whole, without unnecessary delay.''

In SECY–11–0124, ''Recommended Actions To Be Taken Without Delay from the Near-Term Task Force Report'' (ADAMS Accession No. ML11245A127), the NRC staff provided recommendations to the Commission on actions that, in the staff's judgment, should be initiated without unnecessary delay, and requested that the Commission provide direction for moving forward on these recommendation (subsequently referred to as ''Tier 1'' recommendations). The Commission approved the staff's proposed actions in the SRM for SECY–11–0124 (ADAMS Accession No. ML112911571), dated October 18, 2011. In SECY–11–0137, ''Prioritization of Recommended Actions to Be Taken in Response to Fukushima Lessons Learned'' (ADAMS Accession No. ML11269A204), the NRC staff requested that the Commission approve the staff's prioritization of the NTTF recommendations. In the SRM for SECY–11–0137 (ADAMS Accession No. ML113490055), dated December 15, 2011, the Commission approved the staff's proposed prioritization of the NTTF recommendations and supported action on the Tier 1 recommendations, subject to the direction in the SRM.

With respect to regulatory action regarding onsite emergency response capabilities, the Commission directed the NRC staff to initiate a rulemaking on NTTF Recommendation 8, in the form of an ANPR. This document responds to that Commission direction.

In November 2011, the Institute of Nuclear Power Operations (INPO) issued INPO–11–005, ''Special Report on the Nuclear Accident at the Fukushima Dai-ichi Nuclear Power Station'' (ADAMS Accession No. ML11347A454). In the SRM for SECY–11–0137, the Commission directed NRC staff to consider INPO–11–005 in its development of the technical bases for any proposed regulatory changes.

III. Background: Onsite Emergency Response Capabilities

A. Emergency Operating Procedures

Emergency Operating Procedures (EOPs) are required procedures designed to mitigate the effects of a design basis accident and place the plant in a safe shutdown condition. The EOPs are required by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix B, Criterion V, ''Instructions, Procedures, and Drawings,'' and are included in the administrative control sections of licensee's technical specifications. Licensed operators are trained and evaluated in the implementation of EOPs through initial license training. The NRC evaluates licensed operator candidates' knowledge of EOPs during an initial written examination, as required by 10 CFR 55.41 and 55.43, and an initial operating test, as required by 10 CFR 55.45. For proficiency, licensed operator requalification training programs, required by 10 CFR 55.59, routinely train and evaluate licensed operators on their knowledge and ability to implement the EOPs.

B. Severe Accident Management Guidelines

During the 1990s, the nuclear industry developed Severe Accident Management Guidelines (SAMGs) as a voluntary industry initiative in response to Generic Letter 88–20, Supplement 2, ''Accident Management Strategies for Consideration in the Individual Plant Examination Process,'' dated April 4, 1990 (ADAMS Accession No. ML031200551). SAMGs provide guidance to operators and Technical Support Center (TSC) staff in the event of an accident that progresses beyond a plant's design basis (and therefore beyond the scope of the EOPs). The nuclear power industry owners' groups (i.e., industry organizations with representatives from the various nuclear plant owners that provide industry oversight for various plant designs) developed generic guidelines specific to the individual plant designs. Given the voluntary nature of the initiative for SAMGs, their implementation throughout the industry has been varied, as noted by NRC inspection results for Temporary Instruction 2515/184, ''Availability and Readiness Inspection of Severe Accident Management Guidelines (SAMGs)'' (ADAMS Accession No. ML11115A053). The guidelines themselves were implemented by individual licensees,

but because the NRC has not developed a regulatory requirement for SAMGs, the training, evaluation, and procedure control requirements for SAMGs vary from plant to plant.

C. Extensive Damage Mitigation Guidelines

Following the terrorist events of September 11, 2001, the NRC ordered licensees to develop and implement specific guidance and strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities using existing or readily available resources that can be effectively implemented under the circumstances associated with loss of large areas of the plant due to explosions or fire. These requirements were subsequently imposed as license conditions for individual licensees and formalized in the Power Reactor Security Requirements final rule (74 FR 13926; March 27, 2009) in 10 CFR 50.54(hh)(2). As a result, Extensive Damage Mitigation Guidelines (EDMGs) were developed in order to provide guidance to operating crews and TSC personnel on the implementation of the strategies developed to address these large area events. The events at the Fukushima Dai-ichi Nuclear Power Station following the March 11, 2011, earthquake and tsunami highlighted the continued potential benefits of these strategies in mitigating the effects of prolonged SBOs and other events that challenge key safety functions. The NRC has not developed a specific regulatory requirement for training on EDMGs.

D. Onsite Emergency Response Capabilities Versus Emergency Preparedness

This ANPR focuses on the effectiveness of accident mitigating procedures and the training and exercises associated with these procedures. When using the term ''accident mitigating procedures'' in this document, the NRC is referring to EOPs, SAMGs, and EDMGs. The licensee's emergency preparedness plan and implementing procedures, which are required by 10 CFR 50.47 and 50.54(q) and Appendix E to 10 CFR part 50, are being evaluated through other NTTF recommendations, and the associated efforts are referred to in the questions in Section IV.D. However, the licensee's emergency preparedness plan and implementing procedures are not the subject of this ANPR.

IV. Discussion and Request for Public Comment

A. ANPR Purpose

In SECY–11–0124, the NRC staff recommended that the agency engage stakeholders during rulemaking activities ''so that the regulatory action and licensee actions taken effectively resolve the identified issues and implementation challenges are identified in advance.'' The NRC staff proposed interaction with stakeholders to support development of the regulatory basis, a proposed rule, and implementing guidance for strengthening and integrating the onsite emergency response capabilities. In the SRM for SECY–11–0124, the Commission directed the NRC staff to issue an ANPR prior to developing the regulatory basis for a proposed rule. Accordingly, the NRC's objective in this ANPR is to solicit external stakeholder feedback to inform the NRC staff's efforts to evaluate regulatory approaches for strengthening the current onsite emergency response capability requirements.

In the SRM for SECY–11–0124, the Commission also encouraged NRC staff to develop recommendations that continue to realize the strengths of a performance-based system as a guiding principle. The Commission indicated that, to be effective, approaches should be flexible and able to accommodate a diverse range of circumstances and conditions. The Commission stated that for ''consideration of events beyond the design basis, a regulatory approach founded on performance-based requirements will foster development of the most effective and efficient, site-specific mitigation strategies, similar to how the agency approached the approval of licensee response strategies for the 'loss of large area' event'' addressed in 10 CFR 50.54(hh)(2).

Consistent with the Commission's direction in the SRM for SECY–11–0124, the NRC is open to flexible, performance-based strategies to address onsite emergency response capability requirements. This ANPR is structured around questions intended to solicit information that (1) supports development of such a framework and (2) supports assembling a complete and adequate regulatory basis that enables rulemaking to be successful. In this context, commenters should feel free to provide feedback on any aspects of onsite emergency response capability that would support this ANPR's regulatory objective, whether or not in response to a stated ANPR question.

B. Rulemaking Objectives/Success Criteria

The NRC is considering development of a proposed rule that would amend the current onsite emergency response capability requirements. Currently, the regulatory and industry approaches to onsite emergency response capability are fragmented into the separate strategies that were discussed in Section III of this document. By promulgation of an onsite emergency response capability rule, the NRC would be able to establish regulations that, when implemented by licensees, would strengthen and integrate the various onsite emergency response strategies. Specifically, the proposed requirements for onsite emergency response capability would strive to accomplish the following goals:

1. Ensure that effective transitions are developed between the various accident mitigating procedures (EOPs, SAMGs, and EDMGs) so that overall strategies are coherent and comprehensive.
2. Ensure that command and control strategies for large scale events are based on the best understanding of severe accident progression and effective mitigation strategies, and well defined in order to promote effective decision-making at all levels and develop organizational flexibility to respond to unforeseen events.
3. Ensure that the key personnel relied upon to implement these procedures and strategies are trained, qualified, and evaluated in their accident mitigation roles.
4. Ensure that accident mitigating procedures, training, and exercises are appropriately standardized throughout the industry and are adequately documented and maintained.

The NRC is seeking stakeholders' views on the following specific regulatory objectives:

1. What is the preferred regulatory approach to addressing NTTF Recommendation 8?

For example:

a. Should the NRC develop a new rule, or could the requirements that would provide for a more strengthened and integrated response capability be accomplished by a method other than a rulemaking? Provide a discussion that supports your position.

b. If a new rule is developed, what type of supporting document would be most effective for providing guidance on the new requirements? Provide a discussion that supports your position.

2. The NTTF recommendation for emergency response procedures stressed that the EOP guidelines should be revised to establish effective transitions between EOPs, SAMGs, and EDMGs in

an effort to promote a more integrated approach to onsite emergency response. The NRC is interested in stakeholder opinions on the best course of action for revising and maintaining these procedures to accomplish this objective. For example:

a. Should the SAMGs be standardized throughout the industry? If so, describe how the procedures should be developed, and discuss what level of regulatory review would be appropriate. Should there be two sets of standard SAMGs, one applicable to pressurized water reactors (PWRs) and one applicable to boiling water reactors (BWRs), or should SAMGs be developed for the various plant designs in a manner similar to EOPs? Provide a discussion that supports your position.

b. What is the best approach to ensure that procedural guidance for beyond design basis events is based on sound science, coherent, and integrated? What is the most effective strategy for linking the EOPs with the SAMGs and EDMGs? Should the transition from EOPs to SAMGs be based on key safety functions, or should the SAMGs be developed in a manner that addresses a series of events that are beyond a plant's design basis? Provide a discussion that supports your position.

c. The NTTF Recommendation 8 strongly advised that the plant owners' groups should undertake revision of the accident mitigating procedures to avoid having each licensee develop its own approach. Is this the best course of action? What additional scenarios or accident plans should be considered for addition to SAMG technical guidelines as a result of the lessons learned in Japan? Provide a discussion that supports your position.

d. In the SRM for SECY–11–0137, the Commission directed the NRC staff to consider the November 2011 INPO report, INPO–11–005, in the development of the technical bases for Recommendation 8. How should this document be used by industry in developing SAMGs and the NRC in developing any proposed regulatory changes? Provide a discussion that supports your position.

e. Should there be a requirement for the SAMGs and EDMGs to be maintained as controlled procedures in accordance with licensee quality assurance programs? Provide a discussion that supports your position.

f. Should the SAMGs and EDMGs be added to the ''Administrative Controls'' section of licensee technical specifications? Provide a discussion that supports your position.

g. In a letter dated October 13, 2011 (ML11284A136), the Advisory Committee on Reactor Safeguards (ACRS) recommended that Recommendation 8 be expanded to include fire response procedures. In their letter, ACRS stated that some plant-specific fire response procedures can direct operators to perform actions that may be inconsistent with the EOPs, and that experience has shown that parallel execution of fire response procedures, abnormal operating procedures, and EOPs can be difficult and complex. Should efforts to integrate the EOPs, SAMGs, and EDMGs include fire response procedures? Are there other procedures that should be included in the scope of this work? Provide a discussion that supports your position.

h. What level of effort, in terms of time and financial commitment, will be required by the industry to upgrade the accident mitigating procedures? If possible, please include estimated milestones and PWR/BWR cost estimates.

3. The NTTF established the identification of clear command and control strategies as an essential aspect of Recommendation 8. What methodology would be best for ensuring that command and control for beyond design basis events is well defined? For example:

a. Should separate procedures be developed that clearly establish the command and control structures for large-scale events? Should defined roles and responsibilities be included in technical specifications along with associated training and qualification requirements? Provide a discussion that supports your position.

b. Should the command and control approach be standardized throughout the industry or left for individual licensees to define? Provide a discussion that supports your position.

c. What level of effort, in terms of time and financial commitment, will be required by the industry to develop these command and control strategies? If possible, please include estimated milestones and PWR/BWR cost estimates.

4. As the guidelines for accident mitigating procedures are revised and the command and control strategies are developed, personnel who will be implementing these procedures must be adequately trained, qualified, and evaluated. What would be the best approach for ensuring that the personnel relied upon to implement the revised procedures are proficient in the use of the procedures, maintain adequate knowledge of the systems referenced in these procedures, and can effectively make decisions, establish priorities, and direct actions in an emergency situation? For example:

a. Should a systems approach to training be developed to identify key tasks that would be performed by the various roles identified in the new strategies? Provide a discussion that supports your position.

b. Should the current emergency drill and exercise requirements be revised to ensure that the strategies developed as a result of this ANPR will be evaluated in greater depth? Provide a discussion that supports your position.

c. Should the revised accident mitigating procedures, specifically SAMGs and EDMGs, be added to the knowledge and abilities catalogs for initial reactor operator licenses? Provide a discussion that supports your position.

d. What level of plant expertise should be demonstrated by the personnel assigned to key positions outlined by the accident mitigation guidelines and command and control strategy? Should these personnel be required to be licensed or certified on the plant design? Provide a discussion that supports your position.

e. What training requirements should be developed to ensure emergency directors and other key decision-makers have the command and control skills needed to effectively implement an accident mitigation strategy? Provide a discussion that supports your position.

f. What should the qualification process entail for key personnel identified in the new strategies? How would this qualification process ensure proficiency? Provide a discussion that supports your position.

g. What level of effort, in terms of time and financial commitment, will be required by the industry to develop and implement these training, qualification, and evaluation requirements? If possible, please include estimated milestones and PWR/BWR cost estimates.

C. Applicability to NRC Licenses and Approvals

The NRC would apply the new onsite emergency response capability requirements to power reactors, both currently operating and new reactors, and would like stakeholder feedback.

Accordingly, the NRC envisions that the requirements would apply to the following:

- Nuclear power plants currently licensed under 10 CFR part 50;
- Nuclear power plants currently being constructed under construction permits issued under 10 CFR part 50, or whose construction permits may be reinstated;

• Future nuclear power plants whose construction permits and operating licenses are issued under 10 CFR part 50; and

• Current and future nuclear power plants licensed under 10 CFR part 52.

D. Relationship Between Recommendation 8 and Other Near-Term Task Force Recommendations

The NRC notes that there is a close relationship between the onsite emergency response capability requirements under consideration in this ANPR effort and several other near-term actions stemming from the NTTF report (and identified in SECY–11–0124 and SECY–11–0137). Regulatory actions taken in response to these other activities might impact efforts to amend onsite accident mitigating procedures and training. In this regard:

1. What is the best regulatory structure for integrating the onsite emergency response capability requirements with other post-Fukushima regulatory actions, such that there is a full, coherent integration of the requirements?

2. Recommendations 4.1 and 4.2 address SBO regulatory actions and mitigation strategies for beyond design basis external events, respectively. The implementation strategies developed in response to Recommendations 4.1 and 4.2 will require corresponding procedures. The NRC recognizes the need for coordinating efforts under Recommendations 4.1, 4.2, and 8. What is the best way to integrate these three regulatory efforts to ensure that they account for the others' requirements, yet do not unduly overlap or inadvertently introduce redundancy, inconsistency, or incoherency?

3. Recommendation 9.3 addresses staffing during a multiunit event with an SBO. Should staffing levels change as a result of a revised onsite emergency response capability or should these duties be assigned to existing staff?

4. Recommendation 10.2 addresses command and control structure and qualifications for the licensee's decision-makers for beyond design basis events. Should this recommendation be addressed concurrently with Recommendation 8?

E. Interim Regulatory Actions

The NRC recognizes that implementation of multiple post-Fukushima requirements could be a challenge for licensees and requests feedback on how best to implement multiple requirements, specifically onsite emergency response capability requirements, without adversely impacting licensees' effectiveness and efficiency. It will take several years to issue a final rule. Should the NRC use other regulatory vehicles (such as commitment letters or confirmatory action letters) to put in place interim coping strategies for onsite emergency response capabilities while rulemaking proceeds?

V. Public Meeting

The NRC plans to hold a category 3 public meeting with stakeholders during the ANPR public comment period. The public meeting is intended as a forum to discuss the ANPR with external stakeholders and provide information on the feedback requested in the ANPR to support development of onsite emergency response capability requirements.

The meeting is not intended to solicit comment. Instead, the NRC will encourage stakeholders at the meeting to provide feedback in written form during the ANPR comment period. To support full participation of stakeholders, the NRC staff plans to provide teleconferencing and Webinar access for the public meeting. Since the intent of the meeting is not to solicit or accept comments, the meeting will not be transcribed. The NRC will issue the public meeting notice 10 calendar days before the public meeting.

Stakeholders should monitor the NRC's public meeting Web site for information about the public meeting: *http://www.nrc.gov/public involve/public-meetings/index.cfm.*

VI. Rulemaking Process and Schedule

Stakeholders should recognize that the NRC is not obligated to provide detailed comment responses to feedback provided in response to this ANPR. If the NRC develops a regulatory basis sufficient to support a proposed rule, there will be an opportunity for additional public comment when the regulatory basis and the proposed rule are published. If supporting guidance is developed for the proposed rule, stakeholders will have an opportunity to provide feedback on the implementing guidance.

VII. Related Petition for Rulemaking Action

The NTTF report provided a specific proposal for onsite emergency actions that was subsequently endorsed by the National Resources Defense Council (NRDC) in a petition for rulemaking (PRM), PRM–50–102 (76 FR 58165; September 20, 2011), as a way to address licensee training and exercises. In connection with NTTF Recommendation 8.4, ''Onsite emergency actions,'' the NRDC requested in its petition that the NRC ''institute a rulemaking proceeding applicable to nuclear facilities licensed under 10 CFR 50, 52, and other applicable regulations to require more realistic, hands-on training and exercises on Severe Accident Mitigation *[sic]* Guidelines (SAMGs) and Extreme Damage Mitigation Guidelines (EDMGs) for licensee staff expected to implement the strategies and those licensee staff expected to make decisions during emergencies, including emergency coordinators and emergency directors.'' The Commission has established a process for addressing a number of the recommendations in the NTTF Report, and the NRC determined that the issues raised in PRM–50–102 are appropriate for consideration and will be considered in this Recommendation 8 rulemaking. Persons interested in the NRC's actions on PRM–50–102 may follow the NRC's activities at *www.regulations.gov* by searching on Docket ID NRC–2012–0031.

VIII. Available Supporting Documents

The following documents provide additional background and supporting information regarding this activity and corresponding technical basis. The documents can be found in ADAMS. Instructions for accessing ADAMS are in the **ADDRESSES** section of this document.

Date	Document	ADAMS Accession Number/ **Federal Register** Citation
April 4, 1990	Generic Letter 88–20, Supplement 2, ''Accident Management Strategies for Consideration in the Individual Plant Examination Process''.	ML031200551
August 28, 2007	Appendix A to 10 CFR part 50—General Design Criteria for Nuclear Power Plants	72 FR 49505
August 28, 2007	Final Rule: Licenses, Certifications, and Approvals for Nuclear Power Plants	72 FR 49352
March 27, 2009	Final Rule: Power Reactor Security Requirements	74 FR 13926

Date	Document	ADAMS Accession Number/ **Federal Register** Citation
March 23, 2011	Memorandum from Chairman Jaczko on Tasking Memorandum-COMGBJ–11–0002—NRC Actions Following the Events in Japan.	ML110950110
April 29, 2011	Temporary Instruction 2515/184, Availability and Readiness Inspection of Severe Accident Management Guidelines (SAMGs).	ML11115A053
May 26, 2011	Completion of Temporary Instruction 2515/184, Availability and Readiness Inspection of Severe Accident Mitigation Guidelines (SAMGs), at Region IV Reactor Facilities.	ML111470264
May 27, 2011	Region I Completion of Temporary Instruction (TI)-184, Availability and Readiness Inspection of Severe Accident Mitigation Guidelines (SAMGs).	ML111470361
June 1, 2011	Completion of Temporary Instruction (TI) 2515/184, Availability and Readiness Inspection of Severe Accident Management Guidelines (SAMGs) at Region III Sites—Revision.	ML111520396
June 2, 2011	Completion of Temporary Instruction (TI) 184, Availability and Readiness Inspection of Severe Accident Mitigation Guidelines (SAMGS) at Region II Facilities—Revision.	ML111530328
July 12, 2011	SECY–11–0093—"The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident".	ML11186A959 ML111861807 (Enclosure)
August 19, 2011	SRM–SECY–11–0093—Near-Term Report and Recommendations for Agency Actions Following the Events in Japan.	ML112310021
September 9, 2011	SECY–11–0124, "Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report.".	ML11245A127 ML11245A144 (Enclosure)
October 3, 2011	SECY–11–0137, "Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned.".	ML11269A204 ML11272A203 (Enclosure)
October 18, 2011	Staff Requirements Memorandum—SECY–11–0124—Recommended Actions to be Taken Without Delay From The Near-Term Task Force Report.	ML112911571
July 26, 2011	NRDC's Petition for Rulemaking to Require More Realistic Training on Severe Accident Mitigation Guidelines (PRM 50–102).	ML11216A242
September 14, 2011	Letter to Geoffrey H. Fettus, Natural Resources Defense Council, Inc. from Annette Vietti-Cook, In Regards to the NRC Will Not Be Instituting a Public Comment Period for PRM–50–97, PRM–50–98, PRM–50–99, PRM–50–100, PRM–50–101, and PRM–50–102.	ML112700269
October 13, 2011	Initial ACRS Review of: (1) The NRC Near-Term Task Force Report on Fukushima and (2) Staff's Recommended Actions to be Taken Without Delay.	ML11284A136
November 30, 2011	INPO–11–005, Special Report on the Nuclear Accident at the Fukushima Dai-ichi Nuclear Power Station.	ML11347A454
December 15, 2011	Staff Requirements Memorandum—SECY–11–0137—Prioritization of Recommended Actions to be Taken in Response to the Fukushima Lessons-Learned.	ML113490055
March 14, 2012	Summary of the Public Meeting to Discuss Implementation of Near-Term Task Force Recommendation 8, Strengthening and Integration of Onsite Emergency Response Capabilities Such As EOPS, SAMGS, and EDMGS, Related to the Fukushima Dai-ichi Power Plant Accident.	ML12073A283

Dated at Rockville, Maryland, this 4th day of April 2012.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Acting Executive Director for Operations.

[FR Doc. 2012–9336 Filed 4–17–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0413; Directorate Identifier 2011–NM–257–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company 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 The Boeing Company Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. This proposed AD was prompted by fuel system reviews conducted by the manufacturer. This proposed AD would require adding design features to detect electrical faults, to detect a pump running in an empty fuel tank, and to ensure that a fuel pump's operation is not affected by certain conditions. We are proposing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by June 4, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility 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 Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5254; fax: 562–627–5210; email: *serj.harutunian@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0413; Directorate Identifier 2011–NM–257–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 because of 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 FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 (66 FR 23086, May 7, 2001) requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

A fuel pump may cause an ignition source in a fuel tank when it has internal electrical faults, or when the pump overheats due to prolonged dry running in an empty fuel tank. Electrical faults inside fuel pumps may cause arcing and burn through the pump housing into an empty fuel tank. If a pump is not shut off in a timely manner when the tank is emptied, the dry-running pump may cause excessive heat and become an ignition source inside the tank.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would prohibit operation of an affected airplane as of 60 months after the effective date of the AD, unless the following design features and requirements have been approved by the FAA and installed on the airplane.

- A protective device for each electrically powered fuel pump that will detect electrical faults and shut off the pump automatically when such faults are detected.
- Additional design features that will detect any fuel pump running in an empty fuel tank, notify the flight crew, and automatically shut off each pump within a specified time if not manually shut off by the flight crew.
- Revisions of the airplane flight manual to include procedures for manual pump shutoff.
- Means to ensure the detection of a fuel pump running in an empty tank that has previously been shut off.

Costs of Compliance

We estimate that this proposed AD affects 180 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD, based on the costs of similar STC installations:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installing design features	65 work-hours × $85 per hour = $5,525	$55,000	$60,525	$10,894,500

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0413; Directorate Identifier 2011–NM–257–AD.

(a) Comments Due Date

We must receive comments by June 4, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes; certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Criteria for Operation

As of 60 months after the effective date of this AD, no person may operate any airplane affected by this AD unless an amended type certificate or supplemental type certificate that incorporates the design features and requirements described in paragraphs (g)(1) through (g)(4) of this AD has been approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, and those design features are installed on the airplane to meet the criteria specified in 14 CFR Section 25.981(a) and (d), at amendment level 25–125.

(1) For all airplanes: Each electrically powered fuel pump installed in any fuel tank that normally empties during flight—such as center wing tanks, auxiliary fuel tanks, and tail tanks—must have a protective device installed to detect electrical faults that can cause arcing and burn through of the fuel pump housing and pump electrical connector. The same device must shut off the pump by automatically removing electrical power from the pump when such faults are detected. When a fuel pump is shut off resulting from detection of an electrical fault, the device must stay latched off, until the fault is cleared through maintenance action and the pump is verified safe for operation.

(2) For airplanes with a 2-person flight crew: Additional design features, if not originally installed by the airplane manufacturer, must be installed to meet 3 criteria: to detect a running fuel pump in a tank that is normally emptied during flight, to provide an indication to the flight crew that the tank is empty, and to automatically shut off that fuel pump. The prospective pump indication and shutoff system must automatically shut off each pump in case the flight crew does not shut off a pump running dry in an empty tank within 60 seconds after each fuel tank is emptied. The airplane flight manual supplement (AFMS) must be revised to include flight crew manual pump shutoff procedures in the Normal Operating Procedures section of the AFMS.

(3) For airplanes with a 3-person flight crew: Additional design features, if not originally installed by the airplane manufacturer, must be installed to detect when a fuel pump in a tank that is normally emptied during flight is running in an empty fuel tank, and provide an indication to the flight crew that the tank is empty. The flight engineer must manually shut off each pump running dry in an empty tank within 60 seconds after the tank is emptied. The Limitations section of the AFMS must be revised to specify that this pump shutoff must be done by the flight engineer.

(4) For all airplanes: The empty-tank shutoff system design must preclude the undetected running of a fuel pump in an empty tank after the pump is commanded off automatically or manually.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) 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.

(i) Related Information

For more information about this AD, contact Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5254; fax: 562–627–5210; email: *serj.harutunian@faa.gov.*

Issued in Renton, Washington, on April 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9267 Filed 4–17–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0335; Directorate Identifier 2011–NM–252–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise an existing airworthiness directive (AD) that applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; all Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes; all Model CL–600–2D15 (Regional Jet Series 705) airplanes; and all Model CL–600–2D24 (Regional Jet Series 900) airplanes. The existing AD currently requires replacing certain water accumulator assemblies having a certain part installed on the pitot and static lines of the air data computer (ADC). Since we issued that AD, an error was discovered in one service document number, and we have determined that credit for accomplishing actions in another erroneously cited service document should be removed from that AD. This proposed AD would correct the erroneous service document number and remove the other erroneously cited service document from that AD. We are proposing this AD to prevent pitot-static tubing from becoming partially or completely blocked by water, which could result in erroneous airspeed and altitude indications and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by June 4, 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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; phone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet: *http://www.bombardier.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: Cesar Gomez, Aerospace Engineer, Airframe & Mechanical Systems Branch, ANE–171, New York Aircraft Certification Office (ACO), FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

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–2012–0335; Directorate Identifier 2011–NM–252–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

On September 28, 2011, we issued AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011), an error was discovered in the document number specified in paragraph (i), ''Credit for Actions Accomplished in Accordance with Previous Service Information,'' of that AD. The citation in that paragraph should have read ''Bombardier Service Bulletin 601R–34–147, Revision A, dated November 3, 2009.'' Additionally, we have determined that ''Bombardier Service Bulletin 670BA–34–147, dated April 1, 2009,'' was incorrectly included in AD 2011–21–07 and should be removed from paragraph (i), ''Credit for Actions Accomplished in Accordance with Previous Service Information,'' of that AD.

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

We estimate that this proposed AD affects 1,041 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement [retained actions from AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011)].	2 work-hours × $85 per hour = $170.	$1,200	$1,370	$1,426,170

The new requirements of this proposed AD add no additional economic burden.

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 removing airworthiness directive (AD) 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011), and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2012–0335; Directorate Identifier 2011–NM–252–AD.

(a) Comments Due Date

We must receive comments by June 4, 2012.

(b) Affected ADs

This AD revises AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011).

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7067 inclusive, 7069 through 7990 inclusive, 8000 through 8107 inclusive, and subsequent; all Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes; all Model CL–600–2D15 (Regional Jet Series 705) airplanes; and all Model CL–600–2D24 (Regional Jet Series 900) airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34: Navigation.

(e) Reason

This AD was prompted by reports of airspeed mismatch between the pilot and co-pilot's airspeed indicators. We are issuing this AD prevent pitot-static tubing from becoming partially or completely blocked by water, which could result in erroneous airspeed and altitude indications and consequent loss of control of the airplane.

(f) Compliance

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

(g) Retained Replacement, With Corrections

This paragraph restates the replacement required by paragraph (g) of AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011), with corrections. Within 9 months after November 23, 2011 (the effective date of AD 2011–21–07), do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(1) For Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes identified in Bombardier Service Bulletin 601R–34–147, Revision B, dated March 8, 2011: Replace water accumulator assemblies having part numbers (P/N) 50029–001, 9435015, 50030–001, and 9435014 installed on the pitot and static lines of the air data computer (ADC) with new or serviceable water accumulator assemblies having P/N 50036–001, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–34–147, Revision B, dated March 8, 2011.

(2) For Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes: Replace water accumulator assemblies having P/N 50033–001 installed on the pitot and static lines of the ADC with new or serviceable water accumulator assemblies having P/N 50036–001, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–34–030, Revision B, dated March 23, 2010.

(h) Parts Installation

As of November 23, 2011, no person may install on any airplane a water accumulator assembly, P/N 50029–001, 9435015, 50030–001, or 9435014 for Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; or P/N 50033–001 for Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes; on the pitot and static lines of the ADC.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the replacement required by paragraph (g)(1) of this AD, if the replacement was performed before November 23, 2011, using Bombardier Service Bulletin 601R–34–147, Revision A, dated November 3, 2009 (for Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes).

(2) This paragraph provides credit for the replacement required by paragraph (g)(2) of this AD, if the replacement was performed

before November 23, 2011, using Bombardier Service Bulletin 670BA–34–030, dated April 1, 2009; or Revision A, dated November 3, 2009 (for Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7300; fax: (516) 794–5531. 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.

(k) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2010–37, dated October 28, 2010, and the following service information, for related information.

(1) Bombardier Service Bulletin 601R–34–147, Revision B, dated March 8, 2011.

(2) Bombardier Service Bulletin 670BA–34–030, Revision B, dated March 23, 2010.

Issued in Renton, Washington, on April 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9266 Filed 4–17–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0196; Airspace Docket No. 12–AWP–2]

Proposed Amendment of Class E Airspace; Fairfield, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Travis Air Force Base (AFB), Fairfield, CA. The proposed decommissioning of the Travis VHF Omni-Directional Radio Range (VOR) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before June 4, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0196; Airspace Docket No. 12–AWP–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0196 and Airspace Docket No. 12–AWP–2) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0196 and Airspace Docket No. 12–AWP–2''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace designated as an extension to class D surface area at Travis AFB, Fairfield, CA. Airspace reconfiguration is necessary due to the proposed decommissioning of the Travis VOR, and would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6004, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Travis AFB, Fairfield, CA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6004 Class E airspace Designated as an Extension to a Class D Surface Area.

* * * * *

AWP CA E4 Fairfield, CA [Amended]

Fairfield, Travis AFB, CA
(Lat. 38°15′46″ N., long. 121°55′39″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the Travis AFB 047° bearing, extending from the 4.3-mile radius of Travis AFB to 8.7 miles northeast of Travis AFB and within 1.8 miles each side of the Travis AFB 227° bearing, extending from the 4.3-mile radius of the airport to 8.7 miles southwest of Travis AFB and within 3.7 miles northwest and 1.8 miles southeast of the Travis AFB 236° bearing, extending from the 4.3-mile radius of the airport to 5.6 miles southwest of Travis AFB.

Issued in Seattle, Washington, on April 11, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–9317 Filed 4–17–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0345; Airspace Docket No. 12–AWP–3]

Proposed Amendment of Class E Airspace; Woodland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Watts-Woodland Airport, Woodland, CA. The proposed decommissioning of the Travis VHF Omni-Directional Radio Range (VOR) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before June 4, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0345; Airspace Docket No. 12–AWP–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0345 and Airspace Docket No. 12–AWP–3) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0345 and Airspace Docket No. 12–AWP–3''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

An electronic copy of this document may be downloaded through the

Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface at Watts-Woodland Airport, Woodland, CA. Airspace reconfiguration is necessary due to the proposed decommissioning of the Travis VOR and would enhance the safety and management of aircraft operations at the airport.

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

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Watts-Woodland Airport, Woodland, CA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Woodland, CA [Amended]

Woodland, Watts-Woodland Airport, CA
(Lat. 38°40′26″ N., long. 121°52′20″ W.)

That airspace extending upward from 700 feet above the surface within a 2.6-mile radius of Watts-Woodland Airport, and within 2.6 miles each side of the Watts-Woodland Airport 133° bearing extending from the 2.6-mile radius to 8.1 miles southeast of the Watts-Woodland Airport, and within 1.8 miles each side of the Watts-Woodland Airport 172° bearing extending from the 2.6-mile radius to 6 miles south of the airport, and within 1.9 miles each side of the Watts-Woodland Airport 345° bearing extending from the 2.6-mile radius to 7 miles north of the airport.

Issued in Seattle, Washington, on April 11, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–9318 Filed 4–17–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 006–2012]

Privacy Act of 1974: Implementation

AGENCY: Drug Enforcement Administration, United States Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA) proposes to amend its Privacy Act regulations for the modified system of records entitled the Investigative Reporting and Filing System (IRFS) (JUSTICE/DEA–008), published April 11, 2012 in the **Federal Register**. This system will be exempt from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), (I), (5), and (8); (f); (g); and (h) of the Privacy Act of 1974 for the reasons set forth in the following text. The exemptions are necessary to avoid interference with the law enforcement and counterterrorism functions and responsibilities of the DEA.

DATES: Comments must be received by May 18, 2012.

ADDRESSES: Address all comments to the Department of Justice, Attn: Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530 or by facsimile (202) 307–0693. To ensure proper handling, please reference the CPCLO Order number in your correspondence. You may review an electronic version of the proposed rule at *http://www.regulations.gov* and may also comment at *http://www.regulations.gov.*

Please include the CPCLO Order number in the subject box.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Standard Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern Standard Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Department's public docket. Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by you as the commenter.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONALLY IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personally identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personally identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

FOR FURTHER INFORMATION CONTACT: DEA Headquarters, Attn: Bettie E. Goldman, CCA/Chief, 8701 Morrissette Drive, Springfield, VA 22152, 202–307–3624.

SUPPLEMENTARY INFORMATION: This proposed rule seeks to amend 28 CFR 16.98 to add paragraphs (i) and (j) as set forth below and to delete all references to ''Investigative Reporting and Filing System (Justice/DEA–008)'' from paragraphs (c) and (d) and to renumber the subparagraphs in paragraph (c) accordingly. These modified paragraphs exempt the ''Investigative Reporting and Filing System (IRFS), JUSTICE/DEA–008'' (77 FR 21808) from certain provisions of the Privacy Act, as amended.

In this rulemaking, the Department of Justice proposes to exempt certain records in this Privacy Act system of records from certain provisions of the Privacy Act because the system contains material compiled for law enforcement purposes.

Regulatory Flexibility Act

This proposed rule relates to individuals as opposed to small business entities. Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, the proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the Department of Justice consider the impact of paperwork and other information collection burdens imposed on the public. There is no current or new information collection requirements associated with this proposed rule.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48, requires federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''federal mandate'' is a new or additional enforceable duty, imposed on any state, local, or tribal government, or the private sector. If any federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year the UMRA analysis is required. This proposed rule would not impose federal mandates on any state, local, or tribal government or the private sector.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

Subpart E—Exemption of Records Systems Under the Privacy Act

2. In § 16.98, revise paragraphs (c) and (d) introductory text and add paragraphs (i) and (j) to read as follows:

§ 16.98 Exemption of Drug Enforcement Administration (DEA)—limited access.

* * * * *

(c) Systems of records identified in paragraphs (c)(1) through (c)(6) of this section are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of 5 U.S.C. 552a. In addition, systems of records identified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this section are also exempted pursuant to the provisions of 5 U.S.C. 552a(k)(1) from subsections (c)(3); (d)(1), (2), (3) and (4); and (e)(1):

(1) Air Intelligence Program (Justice/DEA–001)
(2) Clandestine Laboratory Seizure System (CLSS) (Justice/DEA–002)
(3) Planning and Inspection Division Records (Justice/DEA–010)
(4) Operation Files (Justice/DEA–011)
(5) Security Files (Justice/DEA–013)
(6) System to Retrieve Information from Drug Evidence (STRIDE/Ballistics) (Justice/DEA–014)

(d) Exemptions apply to the following systems of records only to the extent that information in the systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2): Air Intelligence Program (Justice/DEA–001); Clandestine Laboratory Seizure System (CLSS) (Justice/DEA–002); Planning and Inspection Division Records (Justice/DEA–010); and Security Files (Justice/DEA–013). Exemptions apply to the Operations Files (Justice/DEA–011) only to the extent that information in the

system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Exemptions apply to the System to Retrieve Information from Drug Evidence (STRIDE/Ballistics) (Justice/DEA–014) only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Exemption from the particular subsections is justified for the following reasons:

* * * * *

(i) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), (I), (5), and (8); (f); (g); and (h): Investigative Reporting and Filing System (IRFS) (JUSTICE/DEA–008). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), or (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement or counterterrorism purposes of this system, or the overall law enforcement process, the applicable exemption may be waived by the DEA in its sole discretion.

(j) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to provide the subject with an accounting of disclosure of records in this system could impede or compromise an ongoing investigation, interfere with a law enforcement activity, lead to the disclosure of properly classified information which could compromise the national defense or disrupt foreign policy, invade the privacy of a person who provides information in connection with a particular investigation, or result in danger to an individual's safety, including the safety of a law enforcement officer.

(2) From subsection (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed for subsections (d)(1), (2), (3), and (4).

(3) From subsection (d)(1) because disclosure of records in the system could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of confidential witnesses and informants, of the investigative interest of the DEA, and lead to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life, health, and physical safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Access to records could also result in the release of information properly classified pursuant to Executive Order, thereby compromising the national defense or foreign policy.

(4) From subsection (d)(2) because amendment of the records thought to be incorrect, irrelevant, or untimely would also interfere with ongoing investigations, criminal or civil law enforcement proceedings, and other law enforcement activities, and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised, as well as may impact information properly classified pursuant to Executive Order.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) From subsection (e)(1) because, in the course of its acquisition, collation, and analysis of information under the statutory authority granted to it, an agency may occasionally obtain information, including information properly classified pursuant to Executive Order, that concerns actual or potential violations of law that are not strictly within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific prosecution. It is impossible to determine in advance what information collected during an investigation will be important or crucial to the apprehension of fugitives. In the interests of effective law enforcement, it is necessary to retain such information in this system of records because it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community and military community.

(7) From subsection (e)(2) because in a criminal investigation, prosecution, or proceeding, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation, prosecution, or proceeding would be placed on notice as to the existence and nature of the investigation, prosecution, and proceeding and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, thorough and effective investigation and prosecution may require seeking information from a number of different sources.

(8) From subsection (e)(3) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to criminal law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants and endanger their lives, health, and physical safety. The individual could seriously interfere with undercover investigative techniques and could take appropriate steps to evade the investigation or flee a specific area.

(9) From subsections (e)(4)(G), (H), and (I) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(10) From subsection (e)(5) because the acquisition, collation, and analysis of information for criminal law enforcement purposes from various agencies does not permit a determination in advance or a prediction of what information will be matched with other information and thus whether it is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys to exercise their judgment in collating and analyzing information and would impede the development of criminal or other intelligence necessary for effective law enforcement.

(11) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, evidence, or interest and interfering with the ability to issue warrants or subpoenas, and could give persons sufficient warning to evade investigative efforts.

(12) From subsections (f) and (g) because this subsection is inapplicable

to the extent that the system is exempt from other specific subsections of the Privacy Act.

(13) From subsection (h) when application of those provisions could impede or compromise an ongoing criminal investigation, interfere with a law enforcement activity, reveal an investigatory technique or confidential source, invade the privacy of a person who provides information for an investigation, or endanger law enforcement personnel.

Dated: March 12, 2012.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer, United States Department of Justice.

[FR Doc. 2012–8769 Filed 4–17–12; 8:45 am]

BILLING CODE 4410–09–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3001

[Docket No. RM2012–4; Order No. 1309]

Revisions to Procedural Rules

AGENCY: Postal Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is establishing a docket to consider proposed changes in procedures for handling cases under 39 U.S.C. 3661. These cases involve changes in the nature of postal services which affect service on a nationwide or substantially nationwide basis. The Commission invites comments from interested persons on ways to improve and expedite its procedures, consistent with due process. Following review of the comments, the Commission may institute a rulemaking proceeding to consider adoption of updated procedures.

DATES: *Comments Date:* June 18, 2012.

Reply Comment Date: July 17, 2012.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Legal Requirements
III. Commission's Section 701 Report
IV. Commission's Authority To Modify Procedures
V. Comment Procedures
VI. Ordering Paragraphs

I. Background

The Commission is soliciting comments on its current procedures under 39 U.S.C. 3661 for reviewing proposals by the Postal Service to make changes in the nature of postal services. After reviewing the comments submitted in this proceeding, the Commission may institute rulemaking proceedings to consider the adoption of new, updated procedures for processing nature of service cases. The goal of any such changes would be to increase the efficiency and timely resolution of nature of service cases while protecting the rights of all participants, including affected mail users.

In this proceeding, the Commission welcomes comments on (1) whether changes to the current procedures and regulations are warranted; (2) if so, what those changes would be; and (3) such other relevant subjects as commenters may wish to address.

Nature of service proceedings conducted pursuant to 39 U.S.C. 3661 have traditionally been referred to as ''N-cases.'' In N-cases, the Commission issues advisory opinions on proposals by the Postal Service for ''a change in the nature of postal services which will generally affect service on a nationwide, or substantially nationwide basis * * *.'' 39 U.S.C. 3661(b).

The Commission's authority to conduct N-cases was originally established by the Postal Reorganization Act of 1970, Public Law 91–375, August 12, 1970 (PRA). Five N-cases were initiated between the enactment of the PRA in 1970 and the passage 36 years later of the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3219 (2006).[1] In the 5 years since passage of the PAEA, the Commission has docketed four N-cases.[2]

The varying degrees of complexity presented by N-cases affects the time required to issue advisory opinions. Ordinarily, cases that present the most far-reaching implications to mailers require more extensive procedures and a greater time between the initial filing and the issuance of an advisory opinion by the Commission. To date, the Commission has issued advisory opinions in three of the four N-cases instituted since enactment of the PAEA.[3] The length of those proceedings ranged from a low of 5 months in Docket No. N2011–1 to a high of 12 months in Docket No. N2010–1.[4] The fourth post-PAEA proceeding was filed on December 5, 2011, and remains pending.

Recently, the Postal Service has found itself in an extremely challenging financial situation, and is seeking to act quickly to remedy its financial difficulties. The Postal Service has expressed a need for a more expeditious hearing process for N-cases in light of its present financial situation. Thus, the Commission is soliciting comments on the advisability of adjusting N-case procedures in ways that allow more timely and relevant advisory opinions.

II. Legal Requirements

A. 39 U.S.C. 3661

If the Postal Service determines that a change in the nature of its services that will affect mail users on a nationwide or substantially nationwide basis may be called for, it must, prior to implementation, submit a proposal to the Commission requesting an advisory opinion on the proposed changes. 39 U.S.C. 3661(b). After the request is submitted, the Postal Service, mail users, and an officer of the Commission required to represent the interests of the general public must be afforded an opportunity for a hearing on the record in accordance with the provisions of 5

[1] Docket No. N75–1, Retail Analysis for Facilities Development Program; Docket No. N75–2, Changes in Operating Procedures Affecting First-Class Mail and Airmail; Docket No. N86–1, Change in Service, 1986, Collect on Delivery Service; Docket No. N89–1, Change in Service, 1989, First-Class Delivery Standards Realignment; Docket No. N2006–1, Evolutionary Network Development Service Changes, 2006.

[2] Docket No. N2009–1, Station and Branch Optimization and Consolidation Initiative, 2009; Docket No. N2010–1, Six-Day to Five-Day Street Delivery and Related Service Changes, 2010; Docket No. N2011–1, Retail Access Optimization Initiative, 2011; Docket No. N2012–1, Mail Processing Network Rationalization Service Changes, 2012.

[3] Docket No. N2009–1, Station and Branch Optimization and Consolidation Initiative, 2009; Docket No. N2010–1, Six-Day to Five-Day Street Delivery and Related Service Changes, 2010; Docket No. N2011–1, Retail Access Optimization Initiative, 2011.

[4] In Docket No. N2009–1, the Postal Service filed its request on July 2, 2009, and the Commission issued its advisory opinion 8 months later on March 10, 2010. In Docket No. N2010–1, the Postal Service filed its request on March 30, 2010, and the Commission issued its advisory opinion nearly 12 months later on March 24, 2011. In Docket No. N2011–1, the Postal Service filed its request on July 27, 2011, and the Commission issued its advisory opinion almost 5 months later on December 23, 2011.

U.S.C. 556 and 5 U.S.C. 557. 39 U.S.C. 3661(c). Those two statutory sections—section 556 and section 557—are part of the federal Administrative Procedure Act. Section 556 sets forth the procedures by which administrative agencies must conduct evidentiary hearings. Section 557 establishes requirements for decisions issued in those administrative hearings. At the conclusion of an N-Case proceeding, the Commission must issue a decision in the form of a written opinion and must include a certification by each Commissioner stating that, in the Commissioner's judgment, the opinion conforms to the appropriate statutory requirements. 39 U.S.C. 3661(c).

B. Current Procedural Regulations

The Commission's procedural rules implementing the requirements of section 3661 can be found in 39 CFR 3001.71 through 3001.75. These procedural rules were first written in 1973 and last updated nearly 20 years ago. Procedural rules of general applicability in subpart A of 39 CFR part 3001 also apply.

III. Commission's Section 701 Report

On September 22, 2011, the Commission presented an analysis to Congress and the President discussing how the PAEA is operating and recommending measures to improve the effectiveness and efficiency of postal laws.[5] In the 701 Report, the Commission recommends that Congress consider adding statutory language allowing the Postal Service to request expedited consideration for time-sensitive N-cases and requiring the Postal Service to provide a written response to Commission advisory opinions as well as submitting its response to Congress prior to implementing such changes in service. *Id.* at 71–85.

Attached to the 701 Report was a Postal Service response to the Commission's recommendations, including legislative changes to N-case procedures.[6] In its response, the Postal Service stated its preference for a pending legislative proposal which, if adopted, would require the Commission to issue advisory opinions on Postal Service requests within 90 days of filing and would remove the formal hearing requirement from N-case procedural rules.[7] Postal Service Response to 701 Report at 24. The Postal Service reiterated the need for expedition in handling such cases, while acknowledging that the level of Commission analysis should be consistent with its work in other areas. *Id.*

IV. Commission's Authority To Modify Procedures

The Commission has historically conducted N-case hearings as formal, trial-type proceedings. The Commission recently elaborated on this historic approach in an order denying a Postal Service request for reconsideration of the procedural schedule in Docket No. N2012–1:[8]

> Before the Commission is permitted to issue an advisory opinion, it is required to provide an opportunity for hearing on the record * * *. Participants [in this proceeding have] justified requests for hearings on the record. The Commission has procedures in place, both by precedent and rule, to implement these [statutory] requirements, which provide due process to all participants. The procedures are flexible enough to accommodate various complexities of cases, and levels of controversy, but also include procedural steps that once triggered require somewhat rigid increments of time * * *. A reasonable amount of time, consistent with the complexity of the case, must be provided for each step to ensure due process.

Order No. 1183 at 2–3.

The proceedings in Docket No. N2012–1, currently under consideration by the Commission, highlight the challenges that the Commission can face in N-cases. In this case, the Commission has been presented with a multifaceted proposal by the Postal Service with far-reaching implications for mail users. Parties have urged the Commission to permit extensive discovery and sufficient time to allow preparation of technical rebuttal evidence. The Postal Service has emphasized its need for expedition. The Commission has had to balance the competing concerns for due process against the need for expedition.

In light of the increasing frequency of N-cases and their varying degrees of complexity, it is appropriate for the Commission to re-examine its historic practice of conducting N-cases as trial-type proceedings, according participants extensive discovery and oral cross-examination opportunities in all cases. The authority of regulatory agencies like the Commission to revise their regulations to place limits on the use of formal litigation procedures in certain types of cases has been judicially recognized. In *Citizens Awareness Network* v. *U.S.,* 391 F.3d 338 (1st Cir. 2004), the court held that it was a valid exercise of agency discretion for the Nuclear Regulatory Commission to expedite nuclear reactor licensing proceedings by changing its long-standing procedural regulations to eliminate discovery and restrict cross-examination:

> The APA [Administrative Procedure Act] lays out only the most skeletal framework for conducting agency adjudications, leaving broad discretion to the affected agencies in formulating detailed procedural rules (citation omitted)* * * short of constitutional constraints, a court may not impose procedural requirements * * * beyond those mandated by statute * * *. (Citation omitted).

Citizens Awareness at 349.

While procedures differ from agency to agency and while changes in those procedures require careful consideration in the specific statutory and regulatory contexts presented, the *Citizens Awareness* decision supports the general proposition that agencies have flexibility to tailor their procedures to make hearing processes more efficient. As the court in that case recognized: ''An agency's rules, once adopted, are not frozen in place. The opposite is true: an agency may alter its rules in light of its accumulated experience in administering them (citation omitted).'' *Id.* at 351.

Commenters are encouraged to address what form any new procedures might take, and what procedural safeguards must be preserved to assure that meaningful public participation and the Commission's decisions are helpful to the Postal Service's decision making process as required by law.

V. Comment Procedures

Pursuant to 39 U.S.C. 505, Patricia Gallagher is designated as the Public Representative in this proceeding to represent the interests of the general public.

Interested persons are invited to provide written comments and suggestions as to how the Commission can best fulfill its statutory obligations. Comments are due within 60 days of the date of publication of this notice in the **Federal Register**. All comments and suggestions received will be available for review on the Commission's Web site, *http://www.prc.gov.* Interested persons are further invited to review these submissions and provide follow-up comments and suggestions within 30

[5] Section 701 Report Analysis of the Postal Accountability and Enhancement Act of 2006, September 22, 2011 (701 Report). The report draws its name from section 701 of the PAEA.

[6] United States Postal Service Response to Commission's Draft Section 701 Report, September 16, 2011 (Postal Service Response to 701 Report).

[7] The proposed legislation referred to by the Postal Service is contained in S.1010, 112th Cong. § 206. The bill discussed by the Postal Service is one of several currently pending before Congress.

[8] Docket No. N2012–1, Order Denying Motion for Reconsideration of Ruling Establishing Procedural Schedule, January 31, 2012 (Order No. 1183).

additional days of the due date for initial comments.

VI. Ordering Paragraphs

It is ordered:

1. Docket No. RM2012–4 is established for the purpose of receiving comments in advance of developing regulations regarding new rules of procedure for evaluating requests for advisory opinions under 39 U.S.C. 3661.

2. Interested parties may submit comments no later than 60 days from the date of publication of this notice in the **Federal Register**.

3. Reply comments may be filed no later than 30 days from the due date for initial comments.

4. Pursuant to 39 U.S.C. 505, Patricia Gallagher is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this document in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–9300 Filed 4–17–12; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0169; FRL–9660–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Deferral for CO_2 Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality (VADEQ) on December 14, 2011. This revision proposes to defer until July 21, 2014 the application of the Prevention of Significant Deterioration (PSD) permitting requirements to biogenic carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources in the Commonwealth of Virginia. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before May 18, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0169 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: cox.kathleen@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0169, Ms. Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2012–0169. 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 email. 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.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Mr. David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On December 14, 2011, VADEQ submitted a revision to its State Implementation Plan (SIP) to maintain consistency with Federal greenhouse gas (GHG) permitting requirements under the PSD program.

I. Background

A. The Tailoring Rule

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking, the Tailoring Rule, for the purpose of relieving overwhelming permitting burdens from the regulation of GHG's that would, in the absence of the rule, fall on permitting authorities and sources (75 FR 31514). EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program of the CAA. In particular, EPA established in the Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG-emitters.

For the first step of the Tailoring Rule, which began on January 2, 2011, PSD requirements apply to major stationary source GHG emissions only if the sources are subject to PSD anyway due to their emissions of non-GHG pollutants. Therefore, in the first step, EPA did not require sources or modifications to evaluate whether they are subject to PSD requirements solely on account of their GHG emissions. Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most noticeably the best available control technology (BACT) requirement as defined in CAA section 169(3), apply to projects that increase net GHG emissions by at least 75,000 tons per year (tpy) of CO_2 equivalent (CO_2e), but only if the project also significantly increases emissions of at least one non-GHG pollutant. CO_2e is a metric used to compare the emissions from various greenhouse gases based

upon their global warming potential (GWP). The CO_2e for a gas is determined by multiplying the mass of the gas by the associated GWP. The applicable GWP's and guidance on how to calculate a source's GHG emissions in tpy CO_2e can be found in EPA's ''Inventory of U.S. Greenhouse Gas Emissions and Sinks,'' which is updated annually under existing commitment under the United Nations Framework Convention on Climate Change (UNFCCC).

The second step of the Tailoring Rule, which began on July 1, 2011, phased in additional large sources of GHG emissions. New sources that emit, or have the potential to emit (PTE), at least 100,000 tpy CO_2e are subject to the PSD requirements. In addition, sources that emit or have the PTE at least 100,000 tpy CO_2e and that undertake a modification that increases net GHG emissions by at least 75,000 tpy CO_2e are also be subject to PSD requirements. For both steps, EPA noted that if sources or modifications exceed these CO_2e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers in tpy.

Virginia adopted the regulations at 9VAC5 chapter 85 (9VAC5–85) to incorporate the Tailoring Rule thresholds and submitted them to EPA for approval in to the SIP. The Tailoring Rule and the regulations at 9VAC5–85 address both PSD and Title V requirements. However, only the PSD regulations were submitted to EPA for incorporation into the SIP. On May 13, 2011, EPA took final action to approve that SIP revision (76 FR 27898).

B. EPA's Biomass Deferral Rule

On July 20, 2011, EPA promulgated the final ''Deferral for CO_2 Emissions from Bioenergy and other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs'' (Biomass Deferral). Following is a brief discussion of the deferral. For a full discussion of EPA's rationale for the rule, see the notice of final rulemaking at 76 FR 43490.

The biomass deferral delays until July 21, 2014 the consideration of CO_2 emissions from bioenergy and other biogenic sources (hereinafter referred to as ''biogenic CO_2 emissions'') when determining whether a stationary source meets the PSD and Title V applicability thresholds, including those for the application of BACT.[1] Stationary sources that combust biomass (or otherwise emit biogenic CO_2 emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO_2 emissions resulting from those actions. The deferral applies only to biogenic CO_2 emissions and does not affect non-GHG pollutants or other GHG's (e.g., methane (CH_4) and nitrous oxide (N_2O)) emitted from the combustion of biomass fuel. Also, the deferral only pertains to biogenic CO_2 emissions in the PSD and Title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program. Biogenic CO_2 emissions are defined as emissions of CO_2 from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of ''biogenic CO_2 emissions'' include, but are not limited to:

- CO_2 generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO_2 from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO_2 from fermentation during ethanol production or other industrial fermentation processes;
- CO_2 from combustion of the biological fraction of municipal solid waste or biosolids;
- CO_2 from combustion of the biological fraction of tire-derived fuel; and
- CO_2 derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

EPA recognizes that use of certain types of biomass can be part of the national strategy to reduce dependence on fossil fuels. Efforts are underway at the Federal, state and regional level to foster the expansion of renewable resources and promote bioenergy projects when they are a way to address climate change, increase domestic alternative energy production, enhance forest management and create related employment opportunities. We believe part of fostering this development is to ensure that those feedstocks with negligible net atmospheric impact not be subject to unnecessary regulation. At the same time, it is important that EPA have time to conduct its detailed examination of the science and technical issues related to accounting for biogenic CO_2 emissions and therefore have finalized this deferral. The deferral is intended to be a temporary measure, in effect for no more than three years, to allow the Agency time to complete its work and determine what, if any, treatment of biogenic CO_2 emissions should be in the PSD and Title V programs. The biomass deferral rule is not EPA's final determination on the treatment of biogenic CO_2 emissions in those programs. The Agency plans to complete its science and technical review and any follow-on rulemakings within the three-year deferral period and further believes that three years is ample time to complete these tasks. It is possible that the subsequent rulemaking, depending on the nature of EPA's determinations, would supersede the biomass deferral rulemaking and become effective in fewer than three years. In that event, Virginia may revise its SIP accordingly.

For stationary sources co-firing fossil fuel and biologically-based fuel, and/or combusting mixed fuels (*e.g.,* tire derived fuels, municipal solid waste (MSW)), the biogenic CO_2 emissions from that combustion are included in the biomass deferral. However, the fossil CO_2 emissions are not. Emissions of CO_2 from processing of mineral feedstocks (*e.g.,* calcium carbonate) are also not included in the deferral. Various methods are available to calculate both the biogenic and fossil portions of CO_2 emissions, including those methods contained in the GHG Reporting Program (40 CFR Part 98). Consistent with the other pollutants in PSD and Title V, there are no requirements to use a particular method in determining biogenic and fossil CO_2 emissions.

EPA's final biomass deferral rule is an interim deferral for biogenic CO_2 emissions only and does not relieve sources of the obligation to meet the PSD and Title V permitting requirements for other pollutant emissions that are otherwise applicable to the source during the deferral period or that may be applicable to the source at a future date pending the results of EPA's study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO_2 emissions from a particular source during the three-year effective period and the study and future rulemaking do not provide for a permanent exemption from PSD and Title V permitting requirements for the biogenic CO_2 emissions from a source with particular characteristics, then the deferral would end for that type of source and its biogenic CO_2 emissions would have to be appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes,

[1] As with the Tailoring Rule, the Biomass Deferral addresses both PSD and Title V requirements. However, EPA is only taking action on Virginia's PSD program as part of this action.

consistent with that subsequent rulemaking and the Final Tailoring Rule (*e.g.,* a major source determination for Title V purposes or a major modification determination for PSD purposes). EPA also wishes to clarify that we did not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires.

Section 52.21(w) of 40 CFR requires that any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no longer eligible to exclude its biogenic CO_2 emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its biogenic CO_2 emissions after the deferral expires, the source will need to consider its biogenic CO_2 emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the biomass deferral action and this proposed approval of the deferral into the Virginia SIP, and will be addressed through subsequent rulemaking. The results of EPA's review of the science related to net atmospheric impacts of biogenic CO_2 and the framework to properly account for such emissions in Title V and PSD permitting programs based on the study are prospective and unknown. Thus, we are unable to predict which biogenic CO_2 sources, if any, currently subject to the deferral as incorporated into the Virginia SIP would be subject to any permanent exemptions or which currently deferred sources would be potentially required to account for their emissions in the future rulemaking EPA has committed to undertake for such purposes in three or fewer years. Only in that rulemaking can EPA address the question of extending the deferral or putting in place requirements that would have the equivalent effect on sources covered by the biomass deferral. Once that rulemaking has occurred, Virginia may address related revisions to its SIP.

II. Summary of SIP Revision

Similar to our approach with the Tailoring Rule, EPA incorporated the biomass deferral into the regulations governing state programs and into the Federal PSD program by amending the definition of ''subject to regulation'' under 40 CFR 51.166 and 52.21 respectively. Virginia has adopted this same approach. The proposed SIP revision incorporates the Biomass Deferral into Virginia's PSD program by amending the definition of ''subject to regulation'' under 9VAC5–85–50(C). The language adopted by Virginia mirrors the language in the Federal regulations. EPA last took action on these provisions on May 13, 2011 (76 FR 27898). In addition to the incorporation of the Biomass Deferral, the proposed SIP revision makes a minor, clarifying revision to 9VAC5–85–50(B).

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

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

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

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

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

IV. Proposed Action

EPA's review of this material indicates that it is consistent with Federal regulations. EPA is proposing to approve the Virginia SIP revision incorporating the Biomass Deferral,

which was submitted on December 14, 2011. EPA is soliciting public comments on this proposed approval of Virginia's SIP revision request. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: April 5, 2012.

W.C. Early,

Action Regional Administrator, Region III.

[FR Doc. 2012–9339 Filed 4–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0809; FRL–9659–1]

Approval and Promulgation of Implementation Plans; Florida; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part, conditionally approve, and disapprove in part, the State Implementation Plan (SIP) submission, submitted by the State of Florida, through the Florida Department of Environmental Protection (DEP) on December 13, 2007, and supplemented on April 18, 2008, to demonstrate that the State meets the requirements of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. DEP certified that the Florida SIP contains provisions that ensure the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Florida (hereafter referred to as ''infrastructure submission''). EPA is taking four related actions on DEP's infrastructure submission for Florida.

DATES: Written comments must be received on or before May 18, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0809, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2011–0809,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2011–0809. 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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is now taking four related actions on DEP's infrastructure submission for Florida. First, EPA is proposing to approve a Federal Implementation Plan (FIP) for element 110(a)(2)(G), which relates to the authority to implement emergency powers under section 303 of the CAA. Second, EPA is proposing to disapprove in part portions of elements 110(a)(2)(C) and 110(a)(2)(J) of the State's submittal as it relates to the regulation of greenhouse gas (GHG) emissions. Third, EPA is proposing to conditionally approve sub-element 110(a)(2)(E)(ii), which relates to the State board requirements contained section 128 of the CAA. Fourth, and with the exception of the aforementioned elements, EPA is proposing to determine that Florida's infrastructure submission, provided to EPA on December 13, 2007, as supplemented on April 18, 2008, addresses all other required infrastructure elements for the 1997 8-hour ozone NAAQS.

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I. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. *See* 62 FR 38856. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 1997 8-hour ozone NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone NAAQS created uncertainty about how to proceed and many states did not provide the required ''infrastructure'' SIP submission for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the ''infrastructure'' requirements for the 1997 8-hour ozone NAAQS. EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state as of January 7, 2008.

On March 27, 2008, EPA published a final rulemaking entitled, ''Completeness Findings for Section 110(a) State Implementation Plans; 8-Hour Ozone NAAQS,'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. *See* 73 FR 16205. For those states that did receive findings, such as Florida, the findings of failure to submit for all or a portion of a State's implementation plan established a 24-month deadline for EPA to promulgate a FIP to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs. However, the findings of failure to submit did not impose sanctions or set deadlines for imposing sanctions as described in section 179 of the CAA, because these findings do not pertain to the elements contained in the Title I part D plan for nonattainment areas as required under section 110(a)(2)(I). Additionally, the findings of failure to submit for the infrastructure submittals are not a SIP call pursuant to section 110(k)(5).

The finding that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). Florida's infrastructure submission was received by EPA on December 13, 2007, and was determined to be complete on March 27, 2008, for all elements with the exception of 110(a)(2)(G). Specifically, 110(a)(2)(G) relates to the requirement for states to provide authority comparable to that in section 303 of the CAA, Emergency Power, and adequate contingency plans to implement such authority. Florida was among other states that received a finding of failure to submit because its infrastructure submission was deemed incomplete for element (G) for the 1997 8-hour ozone NAAQS by March 1, 2008. The finding of failure to submit action triggered a 24-month clock for EPA to either issue a FIP or take final action on a SIP revision which corrects the deficiency for which the finding of failure to submit was received. Today's action involves four related proposals to act on DEP's December 13, 2007, submission as supplemented on April 18, 2008.

With regard to the proposal to establish a FIP, which will be discussed in further detail below, preliminary background information is provided as follows. In DEP's December 13, 2007, submission and a letter dated April 18, 2008, DEP cited State statutes as

evidence that Florida has the authority to implement emergency powers for the 1997 8-hour ozone standard. Because these statutes have not been approved into the Florida SIP, as part of today's proposal, EPA is proposing a FIP to correct this deficiency. EPA will take action to approve a FIP for element 110(a)(2)(G) unless Florida submits a SIP revision correcting the deficiency for element 110(a)(2)(G) and EPA takes final action to approve the revision prior to such time that EPA is obligated to take final action on this ozone infrastructure SIP submission, per a settlement agreement signed on November 30, 2011. In a letter dated March 23, 2012, DEP provided a letter with the State's intent to submit a SIP revision to address this deficiency in the very near future. A copy of this letter is in the docket for today's proposed rulemaking. EPA acknowledges Florida's request and if EPA is able to take action on Florida's forthcoming SIP revision prior to finalizing the proposed FIP that is being proposed today, the FIP proposed today will no longer be necessary.

Today's action is proposing to approve Florida's infrastructure submission for which EPA made the completeness determination and findings of failure to submit on March 27, 2008. This action is not approving revisions to any rules; but rather, is proposing that Florida's already approved SIP meets certain CAA infrastructure requirements for the 1997 8-hour ozone NAAQS.

II. What elements are required under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below [1] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and fine particulate matter ($PM_{2.5}$) NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[5] Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and (ii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Florida consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve Florida's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 58016 (October 12, 2007). In so doing, Florida's CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has recently finalized a new rule to address the interstate transport of NO_X and SO_X in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Cross-State Air Pollution Rule''). EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's proposed rulemaking.

[5] *See* Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 1997 8-hour ozone NAAQS from Florida.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for Florida.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of

[6] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[8] *See Id.,* 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[9] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [12] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [13] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [14] However, for the one exception to that general assumption (*i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[15] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS (e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the

[9] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See* ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] *See* ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[12] *Id.,* at page 2.

[13] *Id.,* at attachment A, page 1.

[14] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[15] *See* ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIP for Florida.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[18]

IV. What is EPA's analysis of how Florida addressed the elements of the Sections 110(a)(1) and (2) ''infrastructure'' provisions?

EPA is proposing to take four previously described actions in response to Florida's infrastructure SIP submission for the 1997 8-hour ozone NAAQS. Below is a discussion of Florida's submission organized by each of the sub-elements found in sections 110(a)(1) and (2).

1. 110(a)(2)(A): Emission limits and other control measures: There are several regulations within Florida's SIP relevant to air quality control regulations which include enforceable emission limitations and other control measures. Chapters 62–204, *Air Pollution Control Provisions;* 62–210, *Stationary Sources—General Requirements; and* 62–296, *Stationary Sources—Emissions Standards,* establish emission limits for ozone and address the required control measures, means and techniques for compliance with the ozone NAAQS respectively. EPA has made the preliminary determination that the provisions contained in these chapters and Florida's practices are adequate to protect the 1997 8-hour ozone NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) Ambient air quality monitoring/data system: Chapters 62–204, *Air Pollution Control Provisions,* 62–210, *Stationary Sources—General Requirements*, 62–212, *Stationary Sources—Preconstruction Review,* 62–296, *Stationary Sources—Emissions Standards,* and 62–297, *Stationary Sources—Emissions Monitoring* of the Florida SIP, along with the Florida Network Description and Ambient Air Monitoring Network Plan, provide for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies. In May 2011, Florida submitted its monitoring network plan to EPA, and on October 17, 2011, EPA approved this plan. Florida's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2011–0809. EPA

[16] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011).

[17] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See* 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

has made the preliminary determination that Florida's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 1997 8-hour ozone NAAQS.

3. 110(a)(2)(C) Program for enforcement of control measures including review of proposed new sources: Florida's authority to regulate new and modified sources of the ozone precursors volatile organic compounds (VOCs) and nitrogen oxides (NO_X) to assist in the protection of air quality in nonattainment, attainment or unclassifiable areas is established in Chapters 62–210, *Stationary Sources—General Requirements, Section 200—Definitions,* and 62–212, *Stationary Sources—Preconstruction Review, Section 400—Prevention of Significant Deterioration* of the Florida SIP. There are two recent revisions to the Florida SIP (including revisions to Chapters 62–210 and 62–212) that are necessary to meet the requirements of infrastructure element 110(a)(2)(C).

The first revision modifies provisions of Florida's SIP at Chapter 62–210 and 62–212 to recognize NO_X as an ozone precursor as required by the 1997 8-Hour Ozone NAAQS Implementation Rule New Source Review (NSR) Update—Phase 2 final rule (hereafter referred to as the ''Ozone Implementation NSR Update'' or ''Phase 2 Rule''), among other requirements. *See* 70 FR 71612 (November 29, 2005).

On October 19, 2007, and July 1, 2011, DEP submitted revisions to EPA for approval into the Florida SIP to adopt federal requirements for new source review (NSR) permitting promulgated in the Phase 2 Rule. Both, the October 19, 2007, and July 1, 2011, SIP revisions amend the State's PSD regulations to establish that PSD permit applicants must identify NO_X as an ozone precursor as established in the Phase 2 Rule. In addition to meeting the requirements of the Ozone Implementation NSR Update, these revisions are also necessary to address portions of the infrastructure SIP requirements described at element 110(a)(2)(C). Specifically, these SIP revisions address the Ozone Implementation NSR Update requirements to include NO_X as an ozone precursor for permitting purposes. EPA is currently proposing approval of these provisions into the SIP in a separate action from this rulemaking. On March 23, 2012, the proposed rulemaking of Florida's October 19, 2007, and July 1, 2011, SIP revisions was signed by EPA Region 4.

The second revision pertains to revisions to the PSD program promulgated in EPA's June 3, 2010, Greenhouse Gas Tailoring Rule or ''GHG Tailoring Rule.'' *See* 75 FR 31514. Florida did not submit a SIP revision to adopt the appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their greenhouse gas (GHG) emissions as promulgated in the GHG Tailoring Rule. Therefore, Florida's federally-approved SIP contained errors that resulted in its failure to address, or provide adequate legal authority for, the implementation of a GHG PSD program in Florida. Approval of a revision to address GHGs is required to meet 110(a)(2)(C). In the GHG SIP Call,[19] EPA determined that the State of Florida's SIP was substantially inadequate to achieve CAA requirements because its existing PSD program does not apply to GHG-emitting sources; the rule finalized a findings and SIP call for 15 state and local permitting authorities including Florida. EPA explained that if a state, identified in the SIP call, failed to submit the required corrective SIP revision by the applicable deadline, EPA would promulgate a FIP under CAA section 110(c)(1)(A) for that state to govern PSD permitting for GHGs. On December 30, 2010, EPA promulgated a FIP[20] because Florida failed to submit, by its December 22, 2010, deadline, the corrective SIP revision to apply its PSD program to sources of GHG consistent with the thresholds described in the GHG Tailoring rule. The FIP ensured that a permitting authority (i.e., EPA) would be available to issue preconstruction PSD permits to GHG-emitting sources in the State of Florida. EPA took these actions through interim final rulemaking, effective upon publication, to ensure the availability of a permitting authority—EPA—in Florida for GHG-emitting sources when they became subject to PSD on January 2, 2011.

Since Florida currently does not have adequate legal authority to address the new GHG PSD permitting requirements at or above the levels of emissions set in the GHG Tailoring Rule, or at other appropriate levels, its SIP does not satisfy portions of elements of the infrastructure requirements. As a result, EPA is proposing disapproval DEP's submission for infrastructure elements 110(a)(2)(C) and 110(a)(2)(J) as they relate to GHG PSD permitting requirements. EPA's proposed disapproval of these elements does not result in any further obligation on the part of Florida, because EPA has already promulgated a FIP for the Florida PSD program to address permitting GHGs at or above the GHG Tailoring Rule thresholds (76 FR 25178). Thus, today's proposed action to disapprove DEP's submission for elements 110(a)(2)(C) and 110(a)(2)(J), once final, will not require any further action by either DEP or EPA.

Florida's October 19, 2007, and July 1, 2011, SIP revisions[21] address the requisite requirements of infrastructure element 110(a)(2)(C) related to the Phase 2 Rule, therefore, today's action to propose approval of infrastructure SIP element 110(a)(2)(C) related to the Phase 2 Rule is contingent upon EPA is taking final action to approve each of those revisions into the Florida SIP. Additionally, the FIP that is currently in place to address GHG requirements in Florida will remain until Florida submits a final submission to EPA for federal approval and EPA takes final action on the submission. Final action regarding today's proposed approval of infrastructure SIP element 110(a)(2)(C) will not occur prior to final approval of the pending related SIP revisions.

EPA also notes that today's action is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA has made the preliminary determination that Florida's SIP and practices are adequate for program enforcement of control measures

[19] Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call, Final Rule, 75 FR 77698 (December 13, 2010).

[20] Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan—Final Rule, 75 FR 82246 (December 30, 2010).

[21] This pertains to EPA's proposed approval of Florida's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements.

including review of proposed new sources related to the 1997 8-hour ozone NAAQS. For the portion of this element that EPA is disapproving related to GHG PSD permitting requirements, EPA has made the preliminary determination that the already promulgated FIP for Florida is adequate for program enforcement of control measures including review of proposed new sources related to the 1997 8-hour ozone NAAQS.

4. 110(a)(2)(D)(ii) Interstate and International transport provisions: Chapter 62–210, *Stationary Sources—General Requirements* of Florida's SIP, outlines how Florida will notify neighboring states of potential impacts from new or modified sources. Florida does not have any pending obligation under sections 115 and 126 of the CAA. EPA has made the preliminary determination that Florida's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 1997 8-hour ozone NAAQS.

5. 110(a)(2)(E) Adequate resources: EPA is proposing two separate actions with respect to the sub-elements required pursuant to section 110(a)(2)(E). Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Florida's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i) and (iii). With respect to 110(a)(2)(E)(ii) (regarding state boards), EPA is proposing to conditionally approve this sub-element. EPA's rationale for today's proposals respecting each sub-element is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), EPA notes that DEP is responsible for promulgating rules and regulations for the NAAQS, emissions standards general policies, a system of permits, and fee schedules for the review of plans, and other planning needs. As evidence of the adequacy of DEP's resources, EPA submitted a letter to Florida on March 13, 2012, outlining 105 grant commitments and the current status of these commitments for fiscal year 2011. The letter EPA submitted to Florida can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2011–0809. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Florida satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2011, therefore Florida's grants were finalized and closed out.

As discussed above, with respect to sub-element 110(a)(2)(E)(ii), EPA is proposing to conditionally approve Florida's infrastructure SIP as to this requirement. Florida's December 13, 2007, infrastructure certification letter did not certify the adequacy of the State's implementation plan to meet the requirements of section 110(a)(2)(E)(ii) (requiring state compliance with section 128 of the CAA), and presently Florida's SIP does not include provisions to meet section 128 requirements. EPA is proposing to conditionally approve Florida's infrastructure SIP with respect to element 110(a)(2)(E)(ii) based upon a letter dated March 13, 2012, which outlined DEP's commitment to adopt specific enforceable measures into its SIP within one year to address the applicable portions of section 128.

The section 128(a)(1) State Board requirements—as applicable to the infrastructure SIP pursuant to section 110(a)(2)(E)(ii)—provide that each SIP shall require that any board or body which approves permits or enforcement orders shall be subject to the described public interest and income restrictions therein. Subsection 128(a)(2) requires that any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements. EPA's proposed conditional approval of Florida's 110(a)(2)(E)(ii) infrastructure SIP requires the State to adopt specific enforceable measures related to 128(a)(2) to address current deficiencies in the Florida SIP.

For purposes of section 128(a)(1), Florida has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by an appointed Secretary. Appeals of final administrative orders and permits are available only through the judicial appellate process described at Florida Statute 120.68. As such, a ''board or body'' is not responsible for approving permits or enforcement orders in Florida, and the requirements of section 128(a)(1) are not applicable.

Regarding section 128(a)(2) (also made applicable to the infrastructure SIP pursuant to section 110(a)(2)(E)(ii)), Florida has committed to submit for incorporation into the SIP relevant provisions of Florida Statutes, specifically 112.3143(4) and 112.3144, sufficient to satisfy the conflict of interest provisions applicable to the head of DEP and all public officers within the Department.

In accordance with section 110(k)(4) of the CAA, the commitment from Florida must provide that the State will adopt the specified enforceable provisions, and provide a SIP submission to EPA, by a date certain within one year from EPA's final action in this matter. In Florida's letter, dated March 13, 2012, DEP committed to adopt the specified enforceable provisions by October 31, 2012. Failure by the State to adopt these provisions and submit them to EPA for incorporation into the SIP within one year from the effective date of EPA's final conditional approval action would result in this proposed conditional approval being treated as a disapproval. Should that occur, EPA would provide the public with notice of such a disapproval in the **Federal Register.**[22]

As a result of Florida's formal commitment to correct deficiencies contained in the Florida SIP pertaining to section 128, EPA intends to move forward with finalizing the conditional approval consistent with section 110(k)(4) of the Act. EPA has made the preliminary determination that Florida has adequate resources for implementation of the 1997 8-hour ozone NAAQS.

6. 110(a)(2)(F) Stationary source monitoring system: Florida's infrastructure submission describes how the State establishes requirements for emissions compliance testing and utilizes emissions sampling and analysis. It further describes how the State ensures the quality of its data through observing emissions and monitoring operations. Florida DEP uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. These requirements are provided in Chapters 62–210,

[22] EPA notes that pursuant to section 110(k)(4), a conditional approval is treated as a disapproval in the event that a State fails to comply with its commitment. Notification of this disapproval action in the **Federal Register** is not subject to public notice and comment.

Stationary Sources—General Requirements; 62–212, *Stationary Sources—Preconstruction Review;* 62–296, *Stationary Sources—Emissions Standards:* and 62–297, *Stationary Sources—Emissions Monitoring.*

Additionally, Florida is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Florida made its latest update to the NEI on November 22, 2011. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Florida's SIP and practices are adequate for the stationary source monitoring systems related to the 1997 8-hour ozone NAAQS.

7. *110(a)(2)(G) Emergency power:* On March 27, 2008, EPA published a final rulemaking entitled, ''Completeness Findings for Section 110(a) State Implementation Plans; 8-Hour Ozone NAAQS,'' making a finding as to whether each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. *See* 73 FR 16205. Florida was among other states that received a finding of failure to submit because its infrastructure submission was deemed incomplete for element 110(a)(2)(G) for the 1997 8-hour ozone NAAQS by March 1, 2008. The finding of failure to submit action triggered a 24-month clock for EPA to either issue a FIP or take final action on a SIP revision which corrects the deficiency for which the finding of failure to submit was received. *See* 42 U.S.C. 7410(c)(1).

In DEP's December 13, 2007, submission and a letter dated April 18, 2008, DEP cited State statutes as evidence that Florida has the authority to implement emergency powers for the 8-hour ozone standard. The April 18, 2008, letter DEP sent to EPA, which includes the specific State statutes cited by DEP, can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2011–0809. Because these statutes have not been adopted into the federally-approved SIP, EPA is proposing a FIP to correct this deficiency. EPA has preliminarily determined that the cited statutes are sufficient to meet the requirements of section 303 of the CAA thus meet the requirements of element 110(a)(2)(G). Through this action, EPA is proposing use of the following parts of Florida's statutes as part of a FIP, to meet the ''emergency powers'' requirements described at section 110(a)(2)(G) for Florida:

a. *Injunctive relief, remedies.*—

The department may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this chapter or any rule, regulation, permit certification, or order; to enjoin any violation specified in s. 403.161(1); and to seek injunctive relief to prevent irreparable injury to the air, waters, and property, including animal, plant, and aquatic life, of the state and to protect human health, safety, and welfare caused or threatened by any violation.

b. *Decisions which affect substantial interests.*—

If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoinable from the date rendered.

In a letter dated, March 23, 2012, DEP committed to submit a SIP revision correcting deficiencies in the SIP for element 110(a)(2)(G). EPA intends to approve a FIP for element 110(a)(2)(G) unless Florida submits a SIP revision correcting the deficiency for element 110(a)(2)(G). Due to EPA's obligations pursuant to the infrastructure SIP settlement agreement described above, EPA would need to take final action to approve such a SIP revision prior to the date on which EPA is obligated to take final action.[23] Should final approval of a SIP revision related to emergency powers occur after EPA finalizes a FIP for element 110(a)(2)(G), EPA would act to rescind the FIP at that time.

EPA has made the preliminary determination that the proposed FIP for Florida, as outlined above, is adequate for emergency powers related to the 1997 8-hour ozone NAAQS.

8. *110(a)(2)(H) Future SIP revisions:* DEP is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Florida. DEP has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. Florida does not have any nonattainment areas for the 1997 8-hour ozone standard but has made an infrastructure submission for this standard, which is the subject of this rulemaking. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 1997 8-hour ozone NAAQS when necessary.

9. *110(a)(2)(J) (121 consultation) Consultation with government officials:* Chapters 62–204, *Air Pollution Control Provisions* and 62–212, *Stationary Sources—Preconstruction Review,* as well as Florida's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Florida adopted state-wide consultation procedures for the implementation of transportation conformity. These consultation procedures include considerations associated with the development of mobile inventories for SIPs. Implementation of transportation conformity as outlined in the consultation procedures requires DEP to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. EPA approved Florida's consultation procedures on August 11, 2003 (*See* 68 FR 47468). EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with government officials related to the 1997 8-hour ozone NAAQS when necessary.

10. *110(a)(2)(J) (127 public notification) Public notification:* DEP has public notice mechanisms in place to notify the public of ozone and other pollutant forecasting, including an air quality monitoring Web site providing ground level ozone alerts, *http://*

[23] To facilitate an expeditious remedy to this deficiency, upon request of the State, EPA will parallel process such a SIP submittal. *See* 40 CFR part 51, Appendix V.

www.dep.state.fl.us/air/air_quality/countyaqi.htm. Florida also has state statutes, 403.131 *Injunctive relief, remedies* and 120.569(n) (relating to emergency orders) which allows the state to seek injunctive relief to prevent irreparable damage to air quality and federally approved provisions to monitor air pollution episodes for ozone and particulate matter contained in Chapter 62–256.300 *Prohibitions.* EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 1997 8-hour ozone NAAQS when necessary.

11. 110(a)(2)(J) (PSD) PSD and visibility protection: Florida's authority to regulate new and modified sources of ozone precursors VOCs and NO_X to assist in the protection of air quality in nonattainment, attainment or unclassifiable areas is provided for in Chapters 62–210, *Stationary Sources—General Requirements, Section 200—Definitions,* and 62–212, *Stationary Sources—Preconstruction Review, Section 400—Prevention of Significant Deterioration.* As with infrastructure element 110(a)(2)(C), infrastructure element 110(a)(2)(J) also requires compliance with applicable provisions of the PSD program described in Part C of the Act. Accordingly, the GHG Tailoring Rule revisions to Florida's SIP and pending EPA actions on the Ozone Implementation NSR Update are likewise prerequisites to today's proposed action to approve the State's infrastructure element 110(a)(2)(J). See the discussion for element 110(a)(2)(C) above for a description of these pending revisions to the Florida SIP respecting the Ozone Implementation NSR Update.

The second revision pertains to revisions to the PSD program promulgated in the June 3, 2010, GHG Tailoring Rule (75 FR 31514). Florida did not submit a SIP revision to adopt the appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions as promulgated in the GHG Tailoring Rule. Therefore, Florida's federally-approved SIP contained errors that resulted in its failure to address, or provide adequate legal authority for, the implementation of a GHG PSD program in Florida. Approval of a revision to address GHGs is required to meet 110(a)(2)(J).

Since Florida currently does not have adequate legal authority to address the new GHG PSD permitting requirements at or above the levels of emissions set in the GHG Tailoring Rule, or at other appropriate levels, its SIP does not satisfy portions of elements of the infrastructure requirements. As a result, EPA is proposing disapproval DEP's submission for infrastructure elements 110(a)(2)(C) and 110(a)(2)(J) as they relate to GHG PSD permitting requirements. EPA's proposed disapproval of these elements does not result in any further action, because EPA has already promulgated a FIP for the Florida PSD program to address permitting GHGs at or above the GHG Tailoring Rule thresholds (76 FR 25178). See the discussion for element 110(a)(2)(C) above for a description of the FIP related to GHG PSD permitting requirements in Florida.

Both of the previously discussed proposed Ozone Implementation NSR Update SIP revisions [24] address requisite requirements of infrastructure element 110(a)(2)(J), therefore, today's action to propose approval of infrastructure SIP element 110(a)(2)(J) is contingent upon EPA taking final action to approve each of these pending revisions into the Florida SIP. The FIP that is currently in place to address GHG requirements in Florida will remain until Florida submits a final submission to EPA for federal approval and EPA takes final action on the submission. Final action regarding today's proposed approval of infrastructure SIP element 110(a)(2)(J) (PSD and visibility protection) will not occur prior to final approval of the pending related SIP revisions.

EPA also notes that today's action is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(J) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under Part C do not change. Thus, EPA finds that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. Florida has submitted SIP revisions for approval to satisfy the requirements of the CAA Section 169A and 169B, and the regional haze and best available retrofit technology rules contained in 40 CFR 51.308. These revisions are currently under review and will be acted on in a separate action.

EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate the State's ability to implement PSD programs and to provide for visibility protection related to the 1997 8-hour ozone NAAQS when necessary. For the portion of this element that EPA is disapproving related to GHG PSD permitting requirements, EPA has made the preliminary determination that the promulgated FIP for Florida is adequate for program enforcement of control measures including review of proposed new sources related to the 1997 8-hour ozone NAAQS.

12. 110(a)(2)(K) Air quality and modeling/data: Chapter 62–204.800, *Federal Regulations Adopted by Reference,* incorporates by reference 40 CFR 52.21(l), which specifies that air modeling be conducted in accordance with 40 CFR part 51, Appendix W ''Guideline on Air Quality Models.'' These regulations demonstrate that Florida has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. Additionally, Florida supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 1997 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, Florida's air quality regulations demonstrate that DEP has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate the

[24] This pertains to EPA's proposed approval of Florida's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements.

State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 1997 8-hour ozone NAAQS when necessary.

13. 110(a)(2)(L) Permitting fees: Florida addresses the review of construction permits as previously discussed in 110(a)(2)(C). Permitting fees in Florida are collected through the State's federally-approved title V fees program, according to State regulation 403.087(6)(a) *Permit Fees.* EPA has made the preliminary determination that Florida's SIP and practices adequately provide for permitting fees related to the 1997 8-hour ozone NAAQS when necessary.

14. 110(a)(2)(M) Consultation/ participation by affected local entities: Chapter 62–204, *Air Pollution Control Provisions,* requires that SIPs be submitted in accordance with 40 CFR part 51, Subpart F, for permitting purposes. Florida statute 403.061(21) authorizes DEP to ''[a]dvise, consult, cooperate and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department.'' Furthermore, DEP has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP and Regional Haze Implementation Plan. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with affected local entities related to the 1997 8-hour ozone NAAQS when necessary.

V. Proposed Action

As described above, EPA has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Florida. EPA is now proposing four related actions on Florida's December 13, 2007, submission as supplemented on April 18, 2008. First, EPA is proposing to approve Florida's infrastructure submission for the 1997 8-hour ozone NAAQS, with the specific exceptions as follows. Second, EPA is proposing a FIP to address 110(a)(G) for the 1997 8-hour ozone standard. EPA notes that the proposed FIP will not be necessary if EPA receives, and is able to take action on, a SIP revision to address the 110(a)(2)(G) requirements prior to the Agency's obligation to take final action per the terms of a settlement agreement related to this action. Third, EPA is proposing to disapprove Florida's submission for portions of elements 110(a)(2)(C) and 110(a)(2)(J) related to the regulation of GHG emissions. Fourth, EPA is proposing to conditionally approve sub-element 110(a)(2)(E)(ii) related to section 128 of the CAA.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 30, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–9225 Filed 4–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R9–OAR–2011–0130; FRL–9661–4]

State of Nevada; Regional Haze State and Federal Implementation Plans; BART Determination for Reid Gardner Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearing.

SUMMARY: EPA is holding a public hearing on May 3, 2012 for the proposed rule, ''Approval and Promulgation of Air Quality Implementation Plans; State of Nevada; Regional Haze State and Federal Implementation Plans; BART Determination for Reid Gardner Generating Station.''

DATES: The public hearing will be held on May 3, 2012.

ADDRESSES: We will hold a public hearing at Moapa Valley Empowerment High School, 2400 St. Joseph Street, Overton, Nevada 89040. The hearing will begin at 6:30 p.m. and continue until 8:30 p.m., if necessary. An open house will precede the public hearing at the same location from 5 p.m.–6 p.m. The EPA Region 9 Web site for the rulemaking, which includes the proposal and information about the public hearing, is at *http://www.epa.gov/region9/air/actions/nv.html#reid.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the public

hearings, please contact Thomas Webb, EPA Region IX at 415–947–4139, or *Webb.Thomas@epa.gov.* If you require a reasonable accommodation, please contact Terisa Williams, EPA Region IX Reasonable Accommodations Coordinator at 415–972–3829, or *Williams.Terisa@epa.gov.*

SUPPLEMENTARY INFORMATION: The public hearing is to provide the public with an opportunity to present oral comments regarding a proposed Regional Haze State and Federal Implementation Plans for the BART Determination at the Reid Gardner Generating Station in the State of Nevada. The BART determinations require the Reid Gardner Generating Station to meet an emissions limit for oxides of nitrogen at Units 1, 2 and 3 of 0.20 lbs/MMBtu on a 30-day rolling average.

Public hearing: The proposed rule for which EPA will hold the public hearing is available at *http://www.epa.gov/region9/air/actions/nv.html#reid* and also in the docket identified below. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. We will consider written statements and supporting information submitted during the comment period with the same weight as any oral comments and supporting information presented at the public hearing.

At the public hearing, the hearing officer may limit the time available for each commenter to address the proposal to five minutes or less if the hearing officer determines it is appropriate. We will not provide equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral comments and data pertaining to our proposal at the public hearing. We will include verbatim transcripts, in English, of the hearing and written statements in the rulemaking docket.

EPA has established a docket for the proposed rule under Docket ID No. EPA–R09–OAR–2011–0130 (available at *http://www.regulations.gov*).

Dated: April 11, 2012.

Deborah Jordan,

Air Division Director, Region IX.

[FR Doc. 2012–9438 Filed 4–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0243; FRL–9659–9]

Revisions to the California State Implementation Plan, Northern Sierra and Sacramento Metropolitan Air Quality Management Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Northern Sierra Air Quality Management District (NSAQMD) and Sacramento Metropolitan Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP). These revisions concern negative declarations for volatile organic compound (VOC) source categories for the NSAQMD and SMAQMD. We are proposing to approve these negative declarations under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 18, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0243, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following negative declarations listed in Table I:

TABLE 1—SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
NSAQMD	Fiberglass Boat Manufacturing Materials	04/25/11	05/17/11
NSAQMD	Miscellaneous Industrial Adhesives	04/25/11	05/17/11
NSAQMD	Automobile and Light-Duty Truck Assembly Coatings	04/25/11	05/17/11
NSAQMD	Industrial Cleaning Solvents	05/19/08	08/14/08
NSAQMD	Offset Lithographic Printing and Letterpress Printing	05/19/08	08/14/08
NSAQMD	Flexible Package Printing	05/19/08	08/14/08
NSAQMD	Flat Wood Paneling Coatings	05/19/08	08/14/08
NSAQMD	Paper, Film, and Foil Coatings	05/19/08	08/14/08
NSAQMD	Large Appliance Coatings	05/19/08	08/14/08
NSAQMD	Metal Furniture Coatings	05/19/08	08/14/08
SMAQMD	Coating Operations at Aerospace Manufacturing and Rework Operations	10/27/11	01/12/12

In the Rules and Regulations section of this **Federal Register,** we are approving these negative declarations in a direct final action without prior proposal because we believe these negative declarations are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 29, 2012.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 2012–9077 Filed 4–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0180; FRL–9652–3]

Revisions to the California State Implementation Plan, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Yolo-Solano Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions from any source that emits visible air contaminants. We are proposing to approve and rescind local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 18, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0180, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: Rule 2.3, Ringelmann Chart; 2.4, Exceptions (rescinded); Rule 2.7, Wet Plumes (rescinded); Rule 2.11, Particulate Matter Concentrations; and Rule 2.12, Specific Contaminants. In the Rules and Regulations section of this **Federal Register,** we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 8, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–8948 Filed 4–17–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, and 495

[CMS–0044–CN]

RIN 0938–AQ84

Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Stage 2; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects technical errors and typographical errors in the proposed rule entitled ''Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Stage 2'' which appeared in the March 7, 2012, **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Travis Broome, (214) 767–4450.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2012–4443 of March 7, 2012 (77 FR 13698), the proposed rule entitled ''Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Stage 2'' there were a number of technical errors and typographical errors that are identified and corrected in the Correction of Errors section.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 13698, in the ''**FOR FURTHER INFORMATION CONTACT**'' section we made an error in the contact listed for clinical quality measures issues.

On pages 13700 and 13745, in our discussion of reporting on clinical quality measures, we made an error in referencing the name of a national committee.

On pages 13704 and 13731, in our discussion of the objective for making patient health information available electronically, we inadvertently omitted the term ''transmit.''

On pages 13706 and 13728, in our reference to the Office of the National Coordinator for Health Information Technology (ONC) criteria for certification of EHR technologies, we inadvertently mischaracterized the criteria as the Stage 2 criteria instead of 2014 certification criteria.

On page 13707, in our discussion regarding eligible professionals (EPs) who practice in multiple locations, we inadvertently omitted the timeframe by which the determination is made on whether a practice/location is equipped with Certified EHR Technology.

On page 13711, in our solicitation of comments regarding the variations among facility types for an electronic prescribing measure, we inadvertently stated an erroneous threshold percentage.

On page 13723, we used the incorrect term to describe when health information should be shared in context of transitions of care and referrals. In our discussion in the preamble, we used in one instance the term ''discharged'' instead of ''transitioned.''

On page 13725, in our listing of the objectives that fall under public health, we made technical errors in our description of the objective to have the capability to report to cancer registries.

On page 13746, in Table 6, we erroneous included an additional measure steward and its contact information.

On pages 13749 through 13754 in Table 8, we made errors in referencing a national quality assurance program.

On pages 13760 through 13763, in Table 9, we incorrectly listed some of the measure stewards and their respective contact information.

On pages 13743, 13759, 13766, 13769, and 13803 through 13812, we made technical and typographical errors, which include the spelling out of acronyms, errors in the order of bulleted text, the omission of bullets, regulatory citations, and the number of section headings.

B. Summary of Errors in the Regulations Text

On page 13821, in § 495.6(l)(16)(ii), we made an error in the regulations text for the measure for the objective for electronic medication administration record (eMAR). In addition, in § 495.6(m)(1)(iii) we inadvertently omitted the term ''reporting period''.

On page 13816, in § 495.6(d)(8)(ii)(C), contains an incomplete reference to another section of the regulation.

On page 13817 we made the following errors:

- In § 495.6(f)(1)(ii)(B) and § 495.6(f)(7)(i)(E)(2), we used the word ''Beginning'' when referring to regulations that would apply to only 1 year; therefore, we are replacing ''Beginning'' with ''For''.
- In § 495.6(f)(7)(ii)(B) and § 495.6(f)(7)(ii)(C), we only included the new measure in the regulation text not both the existing measure and the new measure as indicated in the preamble. The regulation text is corrected to include both the existing and new measure.
- In § 495.6(h)(2)(ii)(B), we included a duplicative word in the regulation text. The text is revised to remove the duplicative word.

On page 13818, in § 495.6(j)(6)(ii)(B) and on page 13820 in § 495.6 (l)(5)(ii)(B), the phrase used in the regulation text for the measure does not adequately reflect the discussion in the preamble. The phrase ''has enabled the functionality'' is replaced with ''has enabled and implemented the functionality''.

III. Correction of Errors

In FR Doc. 2012–4443 of March 7, 2012 (77 FR 13698), make the following corrections:

A. Correction of Errors in the Preamble

1. On page 13698, third column, first partial paragraph, lines 1 through 2, the phrase, ''or Maria Durham, (410) 786–6978,'' is removed.

2. On page 13700, third column, first full paragraph, lines 13 through 15, the phrase ''National Council for Quality Assurance (NCQA) for medical home accreditation'' is corrected to read ''National Committee for Quality Assurance (NCQA) for medical home recognition''.

3. On page 13745, first column, last two lines through the second column, first partial paragraph, line1, the phrase ''National Council for Quality Assurance (NCQA) for medical home accreditation'' is corrected to read ''National Committee for Quality Assurance (NCQA) for medical home recognition''.

4. On page 13704, third column, first full paragraph, line 4, the phrase ''view online and download'' is corrected to read ''view online, download, and transmit.''

5. On page 13706, first column, second paragraph, lines 7 through 9, the phrase ''included in the ONC EHR certification criteria as finalized for Stage 2 of meaningful use.'' is corrected to read ''included in the ONC 2014 EHR certification criteria.''

6. On page 13707, first column, first full paragraph, lines 11 through 15, the sentence ''We have also received requests for clarification on what it means for a practice/location to be equipped with Certified EHR Technology.'' is corrected to read ''We have also received requests for clarification on what it means for a practice/location to be equipped with Certified EHR Technology at the beginning of the EHR reporting period.''

7. On page 13711, second column, first partial paragraph, line 1, the phrase ''50 percent'' is corrected to read ''65 percent''.

8. On page 13723, second column, seventh paragraph, line 5, the term ''discharged'' is corrected to read ''transitioned''.

9. On page 13725, first column, fourth bulleted paragraph, line 3, the phrase ''where authorized,'' is corrected to read ''except where prohibited,''.

10. On page 13728, second column—

a. Third paragraph, line 9, the phrase ''standards required under Stage 2'' is corrected to read ''standards for Certified EHR Technology''.

b. Last paragraph, line 10, the phrase ''standards required under Stage 2'' is corrected to read ''standards for Certified EHR Technology''.

11. On page 13731, first column, first full paragraph, line 7, the phrase ''view and download'' is corrected to read ''view online, download, and transmit''.

12. On page 13743, second column, first partial paragraph, line 14, ''EHs/CAHs'' is corrected to read ''eligible hospitals and CAHs''.

13. On page 13746 in Table 6—Potential Core Clinical Quality Measure Set To Be Reported by Eligible Professionals Beginning in CY 2014, Column 3 (Clinical Quality Measure Steward & Contact Information) for the following entry is corrected to read as follows:

Measure No.	Clinical quality measure title and description	Clinical quality measure steward and contact information	Domain
TBD	Title: Closing the referral loop: receipt of specialist report Description: Percentage of patients regardless of age with a referral from a primary care provider for whom a report from the provider to whom the patient was referred was received by the referring provider.	Centers for Medicare and Medicaid Services (CMS) 1–888–734–6433 or *http://questions.cms.hhs.gov/app/ask/p/21,26,1139.*	Care Coordination.

14. On pages 13749 through 13754 in Table 8—Clinical Quality Measures Proposed for Medicare and Medicaid Eligible Professionals Beginning With CY 2014, column 4 (Other quality measure programs that use the same measure) is corrected for the following entries:

TABLE 8—CLINICAL QUALITY MEASURES PROPOSED FOR MEDICARE AND MEDICAID ELIGIBLE PROFESSIONALS BEGINNING WITH CY 2014

Measure No.	Other quality measure programs that use the same measure **
NQF 0004	EHR PQRS, HEDIS, State use, ACA 2701, NCQA–PCMH Recognition.
NQF 0014	EHR PQRS, NCQA–PCMH Recognition.
NQF 0031	EHR PQRS, ACO, Group Reporting PQRS, ACA 2701, HEDIS, State use, NCQA–PCMH Recognition.
NQF 0032	EHR PQRS, ACA 2701, HEDIS, State use, NCQA–PCMH Recognition, UDS.
NQF 0033	EHR PQRS, CHIPRA, ACA 2701, HEDIS, State use, NCQA–PCMH Recognition.
NQF 0034	EHR PQRS, ACO, Group Reporting PQRS, NCQA–PCMH Recognition.
NQF 0043	EHR PQRS, ACO, Group Reporting PQRS, NCQA–PCMH Recognition.
NQF 0045	PQRS, NCQA–PCMH Recognition.
NQF 0046	PQRS, NCQA–PCMH Recognition.
NQF 0069	PQRS, NCQA–PCMH Recognition.
NQF 0070	EHR PQRS, NCQA–PCMH Recognition.
NQF 0081	EHR PQRS, Group Reporting PQRS, NCQA–PCMH Recognition.
NQF 0097	ACO, Group Reporting PQRS, NCQA–PCMH Recognition.
NQF 0110	NCQA–PCMH Recognition.
NQF 0271	PQRS, NCQA–PCMH Recognition.
NQF 0399	PQRS, NCQA–PCMH Recognition.
NQF 0400	PQRS, NCQA–PCMH Recognition.
NQF 0401	PQRS, NCQA–PCMH Recognition.
NQF 0405	PQRS, NCQA–PCMH Recognition.
NQF 0406	PQRS, NCQA–PCMH Recognition.

15. On page 13759, first column, third paragraph, lines 10 through 16, the bulleted list that begins ''• Clinical Process/Effectiveness.'' and ends ''• Population & Public Health.'' is corrected to read as follows:

''• Patient & Family Engagement.
• Patient Safety.
• Care Coordination.
• Population & Public Health.
• Efficient Use of Healthcare Resources.
• Clinical Process/Effectiveness.''

16. On page 13760 through 13763, in Table 9—Clinical Quality Measures Proposed for Eligible Hospitals and Critical Access Hospitals Beginning With FY 2014, the Measure Steward and Contact Information, column 3 (Measure steward and contact information) is corrected for the following entries:

TABLE 9—CLINICAL QUALITY MEASURES PROPOSED FOR ELIGIBLE HOSPITALS AND CRITICAL ACCESS HOSPITALS BEGINNING WITH FY 2014

NQF No.	Measure steward and contact information
0480	The Joint Commission (*http://www.jointcommission.org.)*
0495	CMS/Oklahoma Foundation for Medical Quality (OFMQ) Qualitynet.org and click on ''Questions & Answers''.
0497	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0132	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0142	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0137	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0160	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0164	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0163	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0639	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0148	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0147	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0527	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0528	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0529	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0300	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0301	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.
0453	CMS/OFMQ Qualitynet.org and click on ''Questions & Answers''.

TABLE 9—CLINICAL QUALITY MEASURES PROPOSED FOR ELIGIBLE HOSPITALS AND CRITICAL ACCESS HOSPITALS BEGINNING WITH FY 2014—Continued

NQF No.	Measure steward and contact information
0136	CMS/OFMQ Qualitynet.org and click on "Questions & Answers".
0284	CMS/OFMQ Qualitynet.org and click on "Questions & Answers".
0218	CMS/OFMQ Qualitynet.org and click on "Questions & Answers".
0496	CMS/OFMQ Qualitynet.org and click on "Questions & Answers".
1653	CMS/OFMQ Qualitynet.org and click on "Questions & Answers".
1659	CMS/OFMQ Qualitynet.org and click on "Questions & Answers".

17. On page 13766, second column, last paragraph, last line, the reference "§ 495.10" is corrected to read "§ 495.8".

18. On page 13769, second column—

a. First full paragraph, line 1, the phrase "Except as provided" is corrected to read "• Except as provided".

b. Second full paragraph, line 1, the phrase "We would create" is corrected to read "• We would create".

19. On page 13803, third column, after the first partial paragraph, the section heading, "4. Medicare Incentive Program Costs" is corrected to read "3. Medicare Incentive Program Costs".

20. On page 13808, top half of the page following Table 28, second column, after the first partial paragraph, the section heading, "5. Medicaid Incentive Program Costs" is corrected to read "4. Medicaid Incentive Program Costs".

21. On page 13810, bottom half of the page, after Table 34, first column, before the first paragraph, the section heading "6. Benefits for All EPs and All Eligible Hospitals" is corrected to read "5. Benefits for All EPs and All Eligible Hospitals".

22. On page 13811—

a. First column, after the first partial paragraph, the section heading, "7. Benefits to Society" is corrected to read "6. Benefits to Society".

b. Second column, after first partial paragraph, the section heading, "8. General Considerations" is corrected to read "7. General Considerations".

c. Third column, before the last full paragraph, the section heading, "9. Summary" is corrected to read "8. Summary".

23. On page 13812, bottom half of the page, after Table 36, first column, before the first full paragraph, the section heading, "10. Explanation of Benefits and Savings Calculations" is corrected to read "9. Explanation of Benefits and Savings Calculations".

B. Correction of Errors in the Regulations Text

1. On page 13816, second column, seventh full paragraph (§ 495.6(d)(8)(ii)(C)), line 2, the reference "paragraph (d)(8)(ii)(B)" is corrected to read "paragraph (d)(8)(ii)(B)(*1*)".

2. On page 13817,

a. First column,

(1) Fourth full paragraph (§ 495.6(f)(1)(ii)(B)), line 1, the phrase "Beginning 2013, subject to" is corrected to read "For 2013, subject to".

(2) Sixth full paragraph (§ 495.6(f)(7)(i)(E)(2)), line 1, "Beginning 2013, plot and display" is corrected to read "For 2013, plot and display".

(3) Seventh full paragraph (§ 495.6(f)(7)(ii)(B)), the paragraph beginning with the phrase "For 2013, subject to paragraph (c)" and ending with the phrase "recorded as structured data." is corrected to read as follows:

"(B) For 2013—(*1*) Subject to paragraph (c) of this section, more than 50 percent of all unique patients admitted to the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period have blood pressure (for patients age 3 and over only) and height/length and weight (for all ages) recorded as structured data; or

(*2*) The measure specified in paragraph (f)(7)(ii)(A) of this section."

(4) Eighth full paragraph (§ 495.6(f)(7)(ii)(C)), line 2, the phrase "in paragraph (f)(7)(ii)(B)" is corrected to read "in paragraph (f)(7)(ii)(B)(*1*)".

b. Third column, sixth full paragraph (§ 495.6(h)(2)(ii)(B)), line 14, the phrase "must meet the remaining the" is corrected to read "must meet the remaining".

3. On page 13818, second column, last paragraph (§ 495.6(j)(6)(ii)(B)), the phrase "has enabled the" is corrected to read "has enabled and implemented the".

4. On page 13820, second column, ninth paragraph (§ 495.6(l)(5)(ii)(B)), the phrase "has enabled the" is corrected to read "has enabled and implemented the".

5. On page 13821, third column—

a. First full paragraph (§ 495.6(l)(16)(ii)), lines 3 through 6, the sentence "(ii) *Measure.* eMAR is implemented and in use for the entire EHR reporting period in at least one ward/unit of the hospital." is corrected to read "(ii) *Measure.* More than 10 percent of medication orders created by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are tracked using eMAR.".

b. Fifth full paragraph (§ 495.6(m)(1)(iii)), last line, the phrase "the EHR" is corrected to read "the EHR reporting period."

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 12, 2012.

Jennifer M. Cannistra,

Executive Secretary to the Department.

[FR Doc. 2012–9331 Filed 4–17–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

[NPS–WASO–NAGPRA–8611; 2200–1100–665]

RIN 1024–AD99

Native American Graves Protection and Repatriation Act Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: The Secretary of the Interior (Secretary) is responsible for implementation of the Native American Graves Protection and Repatriation Act, including the issuance of appropriate regulations implementing and interpreting its provisions. Minor inaccuracies or inconsistencies in the regulations have been identified by or brought to the attention of the Department. These proposed amendments revise the rules implementing the Native American

Graves Protection and Repatriation Act for purposes of factual accuracy and consistency.

DATES: Comments must be received by June 18, 2012.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 1024–AD99, by any of the following methods:

- *Federal eRulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or hand deliver to:* Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1201 Eye Street NW., (2253), Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1201 Eye Street NW., 8th floor, Washington, DC 20005, telephone (202) 354–1479, facsimile (202) 371–5197.

SUPPLEMENTARY INFORMATION:

Authority

The Secretary of the Interior (Secretary) is responsible for implementation of the Native American Graves Protection and Repatriation Act (NAGPRA or Act) (25 U.S.C. 3001 *et seq.*), including the issuance of appropriate regulations implementing and interpreting its provisions.

Background

NAGPRA addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. Under Section 13 of NAGPRA (25 U.S.C. 3011), the Department of the Interior (Department) published the initial rules to implement NAGPRA (60 FR 62158, December 4, 1995). This regulation is codified at 43 CFR Part 10. Subsequently, the Department published amendments to the regulation concerning:

- Civil penalties (68 FR 16354, April 3, 2003);
- Future applicability (72 FR 13189, March 21, 2007); and
- Disposition of culturally unidentifiable human remains (75 FR 12378, March 15, 2010).

Since the promulgation of the December 4, 1995, rule, minor inaccuracies or inconsistencies in 43 CFR Part 10 have been identified by or brought to the attention of the Department. These proposed amendments revise the rules for purposes of factual accuracy and consistency throughout 43 CFR part 10.

Section-by-Section Analysis

§ 10.2 Definitions

Paragraph (c)(1). The proposed rule would amend the definition of *Secretary* to reflect Departmental delegations of the Secretary's authority under NAGPRA. NAGPRA assigns implementation responsibilities to the Secretary of the Interior. Secretarial Order 3261 (May 23, 2005) delegated some of these implementation responsibilities to other officials in the Department and the National Park Service, and the Department amended part 10 to reflect provisions of this Order (70 FR 57177, September 30, 2005).

Under the Secretarial Order and amended rules, the Assistant Secretary for Fish and Wildlife and Parks (Assistant Secretary) is responsible for:

- Issuing regulations to carry out NAGPRA after consultation with the Assistant Secretary for Indian Affairs;
- Granting extensions of inventory deadlines and awarding implementation grants to Indian tribes, Native Hawaiian organizations, and museums; and
- In consultation with the Solicitor's Office, investigating and assessing civil penalties against museums that fail to comply with NAGPRA.

The Manager of the National NAGPRA Program (Manager), reporting to the National Park Service Director through the Associate Director for Cultural Resources, is responsible for managing the operations of the National NAGPRA Program, and provides staff support to the Assistant Secretary. The Manager's duties include:

- Preparing rules for issuance by the Assistant Secretary, reviewing and recommending disposition of requests for extensions of inventory deadlines, and publishing notices in the **Federal Register**;
- Serving as the Designated Federal Official for the Native American Graves Protection and Repatriation Review Committee;
- Providing technical assistance to the Department of Justice in implementing the trafficking provisions of NAGPRA, in consultation with the Office of the Solicitor;
- Developing and issuing guidelines, technical information, and training, and administering grants to assist Indian tribes, Native Hawaiian organizations, and museums in meeting their NAGPRA obligations; and
- Supporting the civil penalty responsibilities of the Assistant Secretary.

Paragraph (c)(3). The proposed rule would amend the definition of *Manager, National NAGPRA Program* to include the Web site listing the Manager's correct mailing address.

§ 10.4 Inadvertent Discoveries

Paragraph (d)(1)(iii). This paragraph applies to inadvertent discoveries of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal land after November 16, 1990. It would add known lineal descendants to the list of parties to be notified of an inadvertent discovery.

The current rule requires the responsible Federal agency official to notify various parties to whom disposition of the human remains or cultural items might be determined but does not include known lineal descendants. While the current rule omits known lineal descendants from this requirement, it requires the responsible Federal agency official to initiate consultation with the known lineal descendants (43 CFR 10.5(a)).

In order to initiate consultation with known lineal descendants, the Federal agency official, in fact, must notify them of the inadvertent discovery. The proposed rule would correct this oversight by adding known lineal descendants to the list of parties to be notified of an inadvertent discovery.

§ 10.5 Consultation

Paragraph (b)(1)(i). For a sacred object removed from Federal or tribal land after November 16, 1990, NAGPRA excludes lineal descendants from the list of possible owners. This same exclusion applies to an object of cultural patrimony (25 U.S.C. 3002(a)). The current regulations, by contrast, include lineal descendants on the list of possible owners of these objects. (See 43 CFR 10.5(b)(1)(i)). The proposed rule would correct that list to be consistent with NAGPRA.

§ 10.6 Custody

Paragraph (a)(2). Section 3 of NAGPRA addresses ownership or control of Native American cultural items removed from Federal or tribal land after November 16, 1990 (25 U.S.C. 3002(a)). With respect to human remains and associated funerary objects, NAGPRA provides that ownership or control in these cases, in the first instance, is with the lineal descendants (25 U.S.C. 3002(a)). Because ownership or control in these situations does not depend on assertion of a claim, the proposed rule would remove the reference to claims by lineal descendants.

Paragraph (a)(2)(iii)(B). Section 3(a)(2)(C) of NAGPRA addresses ownership or control of human remains

or cultural items whose cultural affiliation cannot be ascertained (25 U.S.C. 3002(a)(2)(C)). It pertains to remains or cultural items removed after November 16, 1990, from Federal land recognized as the aboriginal land of an Indian tribe. NAGPRA states that an Indian tribe whose cultural relationship with the human remains or other cultural items is stronger than that of the Indian tribe recognized as being the aboriginal occupant of the land must be included in the list of potential parties to the disposition of ownership or control of those human remains or cultural items (25 U.S.C. 3002(a)(2)(C)).

The current regulations inadvertently state that the cultural relationship would only be to the objects. The proposed rule would correct this omission by adding a reference to the cultural relationship with the human remains.

§ 10.8 Summaries

Paragraph (e). The current regulations refer to ''individuals'', rather than ''lineal descendants'', in regard to sacred objects in the collection or holdings of a museum or Federal agency. NAGPRA gives the direct lineal descendant of an individual who owned the sacred object standing to request its repatriation, as well as a superior claim against one from an Indian tribe or Native Hawaiian organization (25 U.S.C. 3005(a)(5)). The reference to ''individuals'' is ambiguous, and the proposed rule replaces the term ''individuals'' with the statutory term ''lineal descendants.''

§ 10.10 Repatriation

Paragraph (a)(1)(ii)(B). The proposed rule would remove the incorrect reference to Section 7(c) of NAGPRA and replace it with a correct reference to Section 7(a)(4) (25 U.S.C. 3005(a)(4)). The reference pertains to establishment of cultural affiliation of unassociated funerary objects other than through the summary, consultation, and notification procedures in 43 CFR 10.14.

Paragraph (b)(1)(ii)(B). The proposed rule would remove the incorrect statutory reference to Section 7(c) of NAGPRA and replace it with a correct reference to Section 7(a)(4) (25 U.S.C. 3005(a)(4)). The reference pertains to establishment of cultural affiliation of Native American human remains and associated funerary objects other than through the procedures in 43 CFR 10.9 and 10.14.

Paragraph (c)(2). The proposed rule would clarify that the exception to the requirements for repatriation applies where:

- There are multiple competing requests for repatriation; and
- The museum or Federal agency, after complying with the regulations, cannot determine by a preponderance of the evidence which competing requesting party is the most appropriate claimant.

Paragraph (g). Section 10.11 governs disposition of culturally unidentifiable human remains to tribes and Native Hawaiian organizations from whose tribal or aboriginal land the remains were excavated. The proposed rule would clarify that the Review Committee still is responsible for recommending a process for disposition of culturally unidentifiable human remains not now covered by 43 CFR 10.11.

§ 10.11 Disposition of Culturally Unidentifiable Human Remains

Paragraph (b)(2)(ii). The proposed rule would clarify that, for purposes of Section 10.11, aboriginal occupation may be recognized by a treaty, Act of Congress, or Executive Order, in addition to a final judgment of the Indian Claims Commission or the United States Court of Claims. Section 10.11 implements Section 8(c)(5) of NAGPRA (25 U.S.C. 3006(c)(5)) with respect to disposition of culturally unidentifiable human remains to tribes and Native Hawaiian organizations from whose tribal or aboriginal land the remains were excavated.

Section 10.11 contrasts with the regulations (43 CFR 10.6) implementing Section 3(a) of NAGPRA, where recognition of aboriginal land is only by a final judgment of the Indian Claims Commission or the United States Court of Claims (25 U.S.C. 3002(a)(2)(C)).

§ 10.12 Civil Penalties

Paragraph (c). The proposed rule would clarify that written allegations of a museum's failure to comply with the requirements of NAGPRA are to be sent to the NAGPRA Civil Penalties Coordinator, in the National NAGPRA Program. NAGPRA assigns implementation responsibilities to the Secretary, who has delegated some of these implementation responsibilities to other officials, as reflected in this part. (See Secretarial Order 3261 of May 23, 2005.)

Under the Secretarial Order and this part, the Assistant Secretary, in consultation with the Office of the Solicitor, executes the provisions for civil penalties against museums that fail to comply with NAGPRA, investigates allegations of failure to comply with NAGPRA requirements, and develops and assesses civil penalties (Secretarial Order 3261, Section 4a). The Secretarial Order also directs the Manager, National NAGPRA Program to provide staff, who reports directly to the Assistant Secretary in the performance of these duties, to support the civil penalty responsibilities of the Assistant Secretary. The proposed rule would clarify that written allegations of a museum's failure to comply with the requirements of NAGPRA are to be sent to the NAGPRA Civil Penalties Coordinator, in the National NAGPRA Program.

Paragraph (i)(3). The Manager, National NAGPRA Program provides staff to support the civil penalty responsibilities of the Assistant Secretary (Secretarial Order 3261, Section 4c, May 23, 2005). The proposed rule would clarify that a petition for relief should therefore be sent to the NAGPRA Civil Penalties Coordinator in the National NAGPRA Program.

Paragraph (j)(1). The address for filing a written, dated request for a hearing on a notice of failure to comply or notice of assessment has changed since the rule was promulgated. The proposed rule would correct the mailing address. The proposed rule would also move the final sentence of this paragraph to paragraph (j)(6).

Paragraph (j)(6)(i). The proposed rule would move the final sentence of paragraph (j)(1) to this location, which is more logical. The sentence reads, ''Hearings must take place following the procedures in 43 CFR part 4, Subparts A and B.''

Paragraph (k)(1). The address for filing a ''Notice of Appeal'' has changed since the rule was promulgated. The proposed rule would correct the mailing address.

Paragraph (k)(3). The address for obtaining copies of decisions in civil penalty proceedings under NAGPRA has changed since the rule was promulgated. The proposed rule would correct the mailing address.

§ 10.13 Future Applicability

Paragraph (c)(2). Section 104 of the Federally Recognized Indian Tribe List Act of 1994, codified at 25 U.S.C. 479a–1 (2006), requires publication of the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs. The proposed rule would correct the citation of that legal authority.

§ 10.15 Limitations and Remedies

Paragraph (c)(1). The proposed rule would clarify, consistent with the Administrative Procedure Act (5 U.S.C. 704), that administrative remedies relate

only to Federal agencies and not to museums.

Paragraph (c)(1)(ii). The proposed rule would clarify, consistent with NAGPRA, that Federal collections, rather than Federal lands, are subject to 43 CFR part 10, Subpart C.

Appendix A to Part 10—Sample Summary and Appendix B to Part 10—Sample Notice of Inventory Completion

Since the publication of the initial rules, new templates have been developed that address specific actions that museums and Federal agencies must take to comply with NAGPRA and satisfy the requirements of due process. These templates are published by the Manager, National NAGPRA Program, at *www.nps.gov/nagpra,* and include:

- Notice of Inventory Completion Template for culturally affiliated inventories of Native American human remains and associated funerary objects and disposition with approval from the Secretary in situations not covered by 43 CFR 10.11;
- Notice of Inventory Completion Template for culturally unidentifiable inventories of Native American human remains from tribal or aboriginal land to tribal/aboriginal land Indian tribes, 43 CFR 10.11(c)(1);
- Notice of Inventory Completion Template for culturally unidentifiable inventories of Native American human remains from tribal or aboriginal land to Indian tribes that are not the tribal or aboriginal land Indian tribe, 43 CFR 10.11(c)(2)(i);
- Notice of Inventory Completion Template for culturally unidentifiable inventories of Native American human remains from tribal or aboriginal land with the recommendation of the Secretary to disposition to Indian groups that are non-federally recognized or for reinterment under state law, 43 CFR 10.11(c)(2)(ii);
- Notice of Intent to Repatriate Template for culturally affiliated unassociated funerary objects, sacred objects, and/or objects of cultural patrimony;
- Correction Template (used to correct a previously published notice); and
- Notice of Intended Disposition Template for Native American human remains and cultural items removed from Federal or tribal land after November 16, 1990.

As museums, Federal agencies, Indian tribes, and Native Hawaiian organizations can easily access these and other templates electronically, and as the current templates likely will be supplemented by others in the future, the proposed rule would delete these appendices from this part.

Compliance With Other Laws and Executive Orders; Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local or tribal government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175)

In accordance with the Presidential Memorandum entitled ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951, April 29, 1994); Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 9, 2000); the President's Memorandum for the Heads of Executive Departments and Agencies on the Implementation of Executive Order 13175 (Nov. 5, 2009); and the Secretary of the Interior's Order No. 3317—Department of the Interior Policy on Consultation With Indian Tribes (Dec. 1, 2011); we have evaluated this rule and determined that it has no substantial direct effects on federally recognized Indian tribes because it amends the regulations to correct only minor inaccuracies or inconsistencies in 43 CFR part 10.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission under the Paperwork Reduction Act is not required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by a categorical exclusion under 43 CFR 46.210(i): ''Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

Clarity of This Rule

We are required by Executive Orders 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, or the sections where you feel lists or tables would be useful.

Drafting Information

This proposed rule was prepared by staff of the National NAGPRA Program and of the Office of the Solicitor, Division of Parks and Wildlife and Division of Indian Affairs.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians—claims, Indians—lands, Museums, Penalties, Public lands, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS proposes to amend 43 CFR part 10 as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

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

Authority: 25 U.S.C. 3001 *et seq.*

2. Amend § 10.2 by revising paragraphs (c)(1) and (3) to read as follows:

§ 10.2 Definitions.

* * * * *

(c) * * *

(1) *Secretary* means the Secretary of the Interior or a designee.

* * * * *

(3) *Manager, National NAGPRA Program* means the official of the Department of the Interior designated by the Secretary as responsible for administration of matters relating to this part. Communications to the Manager, National NAGPRA Program should be sent to the mailing address listed on the National NAGRPA Contact Information Web site, *http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM.*

* * * * *

2. Amend § 10.4 by revising paragraph (d)(1)(iii) to read as follows:

§ 10.4 Inadvertent discoveries.

* * * * *

(d) * * *

(1) * * *

(iii) Notify any known lineal descendants, Indian tribes, or Native Hawaiian organizations likely to be culturally affiliated with the remains or objects, the Indian tribe or Native Hawaiian organization that aboriginally occupied the area, and any other Indian tribe or Native Hawaiian organization known to have a cultural relationship to the remains or objects. This notification must be by telephone with written confirmation and must include information about the kinds of remains or objects, their condition, and the circumstances of their discovery;

* * * * *

3. Amend § 10.5 by revising paragraph (b)(1)(i) to read as follows:

§ 10.5 Consultation.

* * * * *

(b) * * *

(1) * * *

(i) Any known lineal descendants of the individual whose remains and associated funerary objects have been or are likely to be excavated intentionally or discovered inadvertently; and

* * * * *

4. Amend § 10.6 by revising paragraphs (a)(2) introductory text and (a)(2)(iii)(B) to read as follows:

§ 10.6 Custody.

(a) * * *

(2) When a lineal descendant cannot be ascertained, and with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony:

(iii) * * *

(B) If a preponderance of the evidence shows that a different Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the remains or objects, in the Indian tribe or Native Hawaiian organization that has the strongest demonstrated relationship with the remains or objects.

* * * * *

5. Amend § 10.8 by revising paragraph (e) introductory text to read as follows:

§ 10.8 Summaries.

* * * * *

(e) *Using summaries to determine affiliation.* Museum and Federal agency officials must document in the summary the following information and must use this information in determining the lineal descendants, Indian tribes, and Native Hawaiian organizations with which objects are affiliated:

* * * * *

6. Amend § 10.10 by revising paragraphs (a)(1)(ii)(B), (b)(1)(ii)(B), (c)(2), and (g) to read as follows:

§ 10.10 Repatriation.

(a) * * *

(1) * * *

(ii) * * *

(B) By presentation of a preponderance of the evidence by a requesting Indian tribe or Native Hawaiian organization under section 7(a)(4) of the Act; and

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) Has been shown by a preponderance of the evidence presented by a requesting Indian tribe or Native Hawaiian organization under section 7(a)(4) of the Act; and

* * * * *

(c) * * *

(2) Circumstances where there are multiple requests for repatriation of remains or objects and the museum or Federal agency, after complying with this part, cannot determine by a preponderance of the evidence which competing requesting party is the most appropriate claimant. In these circumstances, the museum or Federal agency may retain the remains or objects until the competing requesting parties agree upon the appropriate recipient or the dispute is otherwise resolved pursuant to these regulations or by a court of competent jurisdiction; or

* * * * *

(g) *Culturally unidentifiable human remains.* If the cultural affiliation of human remains cannot be established under this part, the human remains must be considered culturally unidentifiable.

(1) Museum and Federal agency officials must report the inventory information regarding these human remains in their holdings to the Manager, National NAGPRA Program, who will send this information to the Review Committee.

(2) The Review Committee will:

(i) Compile an inventory of culturally unidentifiable human remains in the possession or control of each museum and Federal agency; and

(ii) Recommend to the Secretary specific actions for disposition of any human remains not already addressed in § 10.11.

7. Amend § 10.11 by revising paragraph (b)(2)(ii) to read as follows:

§ 10.11 Disposition of culturally unidentifiable human remains.

* * * * *

(b) * * *

(2) * * *

(ii) From whose aboriginal lands the human remains and associated funerary objects were removed. Aboriginal occupation for purposes of this section may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by a treaty, Act of Congress, or Executive Order.

* * * * *

8. Amend § 10.12 by:

A. Revising paragraph (c).

B. Revising paragraph (i)(3).

C. Adding introductory text to paragraph (j).

D. Revising paragraphs (j)(1) and (j)(6)(i).

E. Revising paragraphs (k)(1) and (k)(3).

The revisions to read as follows:

§ 10.12 Civil penalties.

* * * * *

(c) *How to notify the Secretary of a failure to comply.* Any person may file an allegation of failure to comply. Allegations are to be sent to the NAGPRA Civil Penalties Coordinator, National NAGPRA Program, at the mailing address listed on the National NAGPRA Contact Information Web site, *http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM.* The allegation must be in writing, and should:

(1) Identify each provision of the Act with which there has been a failure to comply by a museum;

(2) Include facts supporting the allegation;

(3) Include evidence that the museum has possession or control of Native American cultural items; and

(4) Include evidence that the museum receives Federal funds.

* * * * *

(i) * * *

(3) *File a petition for relief.* You may file a petition for relief within 45 calendar days of receiving the notice of assessment. A petition for relief is to be sent to the NAGPRA Civil Penalties Coordinator, National NAGPRA Program, at the mailing address listed on the National NAGPRA Contact Information Web site, *http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM.* Your petition may ask the Secretary not to assess a penalty or to reduce the penalty amount. Your petition must:

(i) Be in writing and signed by an official authorized to sign such documents; and

(ii) Fully explain the legal or factual basis for the requested relief.

* * * * *

(j) *How you request a hearing.* You may file a written, dated request for a hearing on a notice of failure to comply or notice of assessment with the Departmental Cases Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 405 South Main Street, Suite 400, Salt Lake City, UT 84111. You must also serve a copy of the request on the Solicitor of the Department of the Interior personally or by registered or certified mail (return receipt requested) at the address specified in the notice.

(1) Your request for a hearing must:

(i) Include a copy of the notice of failure to comply or the notice of assessment;

(ii) State the relief sought;

(iii) State the basis for challenging the facts used as the basis for determining the failure to comply or fixing the assessment; and

(iv) State your preferred place and date for a hearing.

* * * * *

(6) * * *

(i) Hearings must take place following the procedures in 43 CFR part 4, subparts A and B. The administrative law judge has all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions under 5 U.S.C. 554–557.

* * * * *

(k) * * *

(1) Either you or the Secretary may appeal the decision of an administrative law judge by filing a Notice of Appeal. Send your Notice of Appeal to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 800 North Quincy Street, Suite 300, Arlington, VA 22203, within 30 calendar days of the date of the administrative law judge's decision. The notice must be accompanied by proof of service on the administrative law judge and the opposing party.

* * * * *

(3) You may obtain copies of decisions in civil penalty proceedings instituted under the Act by sending a request to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 800 North Quincy Street, Suite 300, Arlington, VA 22203. Fees for this service are established by the director of that office.

* * * * *

9. Amend § 10.13 by revising paragraph (c)(2) to read as follows:

§ 10.13 Future applicability.

* * * * *

(c) * * *

(2) The list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau

of Indian Affairs is published in the **Federal Register** as required by section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1 (2006)).

* * * * *

10. In § 10.15, revise paragraph (c)(1) to read as follows:

§ 10.15 Limitations and remedies.

* * * * *

(c) * * *

(1) A person's administrative remedies are exhausted only when the person has filed a written claim with the responsible Federal agency and the claim has been duly denied under this part. This paragraph applies to both:

(i) Human remains, funerary objects, sacred objects, or objects of cultural patrimony subject to subpart B of this part; and

(ii) Federal collections subject to subpart C of this part.

* * * * *

Appendices A and B [Removed]

11. Remove Appendices A and B.

Dated: March 30, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–9228 Filed 4–17–12; 8:45 am]

BILLING CODE 4312–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 531

[Docket No. 12–05]

Non-Vessel-Operating Common Carrier Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission is issuing this Notice of Inquiry seeking comments on its rules which exempt non-vessel-operating common carriers who enter into service arrangements from certain tariff filing requirements of the Shipping Act of 1984.

DATES: Comments are due on or before June 18, 2012.

ADDRESSES: Submit comments to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001; or email non-confidential comments to: *Secretary@fmc.gov* (email comments as attachments preferably in Microsoft Word or PDF).

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 N. Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5725, Fax: (202) 523–0014, Email: *Secretary@fmc.gov.*

Rebecca A. Fenneman, General Counsel, Federal Maritime Commission, 800 N. Capitol Street NW., Washington, DC 20573–0001, (202) 523–5740, Fax (202) 523–5738, Email: *GeneralCounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In December 2004, the Commission issued a final rule exempting [1] non-vessel-operating common carriers (NVOCCs) who enter into NVOCC service arrangements (NSAs) from certain tariff requirements of the Shipping Act of 1984 (Act).[2] The rule allows NVOCCs to enter into NSAs with their customers in lieu of publishing those arrangements in a publicly-available tariff, as otherwise would be required by Sections 8(a) and 10 of the Shipping Act. In the preamble to the final rule, the Commission stated that it would continue to consider how it could remove limitations on shipper participation while ensuring that the criteria of Section 16 were met. 69 FR 75850, 75852 (December 20, 2004).

The ability of two or more unaffiliated NVOCCs to jointly offer NSAs was not included in part 531, in part due to ongoing litigation that included arguments on whether two or more NVOCCs acting concertedly in NSAs were immune from the prohibitions of the antitrust laws. *See United States* v. *Gosselin World Wide Moving, N.V.,* 411 F.3d 502 (4th Cir. 2005), cert. denied, 547 U.S. 1002 (2006).[3] The ruling in the *Gosselin* case alleviated the Commission's concerns that NVOCCs acting jointly through NSAs would create a potential for reduction in competition through immunity from the antitrust laws. In August 2005, the Commission issued a notice of inquiry to consider expanding the exemption provided for in 46 CFR part 531 to enable two or more unaffiliated NVOCCs to jointly offer NSAs.[4] Commenters were given until October 20, 2005, to address a set of questions designed to provide information and perspectives on the likely impact of joint NSA authority.[5]

In its Plan for Retrospective Review of Existing Rules, published on November 4, 2011, the Commission announced its intention to conduct a full review of part 531, governing NSAs, no later than 2013. The purpose of the review is to determine whether the NSA regulations should be modified, streamlined, expanded, or repealed to make them

[1] Section 16 of the Shipping Act grants the Commission the authority to make rules exempting regulated entities from the requirements of the Shipping Act if it finds such an exemption will not result in substantial reduction in competition or detriment to commerce. 46 U.S.C. 40103. The Commission must make an affirmative finding, based on information gathered in a public record, that these adverse consequences will not result from any exemption it may grant.

[2] 46 CFR part 531. The Commission's rules provide that an NSA means a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC or two or more affiliated NVOCCs, in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level. 46 CFR 531.3(p). An NSA shipper is a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers' association, or a non-vessel-operating common carrier. 46 CFR 531.3(o). Specifically, the exemption allows individual NVOCCs (including corporately affiliated NVOCCs), who are compliant with the other requirements of the Shipping Act and the FMC's regulations at 46 CFR part 515 and 46 CFR part 520, to enter into an NSA with one or more NSA shippers. 46 CFR 531.2.

[3] Gosselin World Wide Moving, N.V. and The Pasha Group, involved in the shipping of household goods of American military personnel to and from Europe, were accused of bid rigging in violation of the Sherman Act. They argued, and the district court agreed, that they had antitrust immunity based on three provisions of the Shipping Act: (1) 46 U.S.C. app. § 1706(a)(4), now 46 U.S.C. 40307(a)(5); (2) 46 U.S.C. app. § 1706(a)(2), now 46 U.S.C. 40307(a)(3); and (3) 46 U.S.C. app. § 1706(c)(1), now 46 U.S.C. 40307(c). On cross appeals, the Fourth Circuit rejected the district court's findings and the companies' arguments. First, the court found that the parties' behavior did not solely concern a foreign inland segment as required by 46 U.S.C. 40307(a)(5). The court rejected the argument that *United States* v. *Tucor Int'l, Inc.,* involving shipments of household goods belonging to military personnel from U.S. military bases in the Philippines to Filipino seaports, was analogous. *See United States* v. *Tucor Int'l, Inc.,* 35 F. Supp. 2d 1172 (N.D. Cal. 1998), *aff'd,* 189 F.3d 834 (9th Cir. 1999). Second, the court found it was not reasonable for the companies to rely on 46 CFR 520.13(c) to believe their collusive behavior was exempt from the antitrust laws. Finally, the court rejected the argument that an adverse determination on the two grounds for statutory immunity discussed above constituted a denial or removal such that any penalty could only be imposed prospectively. The court also stated that exceptions to federal antitrust laws should be construed narrowly. *See also In re Household Goods Movers Antitrust Litigation,* 2009 WL 8234043 (D.S.C. Sep. 10, 2009); *U.S.* v. *Daily Gazette,* 567 F. Supp 2d 859, 871 (S.D.W.Va. 2008) (following *Gosselin*).

[4] Docket No. 05–06, 70 FR 52345 (September 2, 2005).

[5] The Commission received comments from: The United States Department of Justice (''DOJ''); the United States Department of Transportation (''DOT''); the World Shipping Council (''WSC''); the International Trade Surety Association (''ITSA''); and Joint Comments of the National Industrial Transportation League, United Parcel Service, Inc., FEDEX Trade Networks Transport & Brokerage, Inc., Transportation Intermediaries Association, North Atlantic Alliance Association, Inc., and the Agriculture Ocean Transportation Coalition (''Joint commenters''). All comments were supportive of expanding the exemption to enable two or more unaffiliated NVOCCs to jointly offer NSAs.

more effective or less burdensome. The Commission considered action on Docket No. 05–06 at its December 8, 2011 meeting. On April 12, 2012, the Commission issued an order discontinuing Docket No. 05–06, citing its intention to conduct a full review of its regulations contained in part 531 governing NSAs, in accordance with its Plan for Retrospective Review of Existing Rules.

Accordingly, the Commission now invites comment and information from all members of the interested public (whether they be located in the United States or elsewhere), including ocean common carriers, ocean transportation intermediaries, exporters, and beneficial cargo owners, on ways to improve or change part 531. The Commission specifically requests comments and current information on (1) extending the exemption to allow two or more unaffiliated NVOCCs to jointly offer NSAs, and (2) how to make the NSA rules less burdensome and more effective in achieving the objectives of the Shipping Act. Comments that are specific and provide supporting data are most helpful.

Submit Comments

Non-confidential filings may be submitted in hard copy or by email as an attachment (preferably in Microsoft Word or PDF) addressed to *secretary@fmc.gov* on or before June 18, 2012. Include in the subject line: ''NSAs—Response to NOI.'' Confidential filings must be submitted in the traditional manner on paper, rather than by email. Comments submitted that seek confidential treatment must be submitted in hard copy by U.S. mail or courier. Confidential filings must be accompanied by a transmittal letter that identifies the filing as ''confidential'' and describes the nature and extent of the confidential treatment requested. When submitting comments in response to the Notice of Inquiry that contain confidential information, the confidential copy of the filing must consist of the complete filing and be marked by the filer as ''Confidential-Restricted,'' with the confidential material clearly marked on each page. When a confidential filing is submitted, an original and one additional copy of the public version of the filing must be submitted. The public version of the filing should exclude confidential materials, and be clearly marked on each affected page, ''confidential materials excluded.'' The Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which confidential treatment is requested. Questions regarding filing or treatment of confidential responses to this Notice of Inquiry should be directed to the Commission's Secretary, Karen V. Gregory, at the telephone number or email provided above.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–9270 Filed 4–17–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12–84; RM–11627; DA 12–551]

Radio Broadcasting Services; Summit, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments. The Commission requests comment on a petition filed by Bowen Broadcasting, proposing to amend the Table of Allotments by allotting FM Channel 228A at Summit, Mississippi, as that community's first local broadcast service. Channel 228A can be allotted at Summit, Mississippi, in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.2 km (8.8 miles) east of Summit, at 31–17–07 North Latitude and 90–19–10 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before May 29, 2012. Reply comments must be filed on or before June 13, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve petitioner as follows: Cliff J. Bowen, Jr., Officer, Bowen Broadcasting, 1125 Petrified Forest Road, Flora, Mississippi 39071.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 12–84, adopted April 5, 2012, and released April 6, 2012. The document proposes to amend Section 73.202 (b) of the Commission's rules, 47 CFR Section 73.202(b). The full text of this Commission Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Summit, Channel 228A.

[FR Doc. 2012–9346 Filed 4–17–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 832 and 852

RIN 2900–AN97

VA Acquisition Regulation: Electronic Submission of Payment Requests

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its acquisition regulations to require contractors to submit payment requests in electronic form in order to enhance customer service, departmental productivity, and adoption of innovative information technology, including the appropriate use of commercial best practices.

DATES: Comments must be received by VA on or before June 18, 2012.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate they are submitted in response to ''RIN 2900–AN97—VA Acquisition Regulation: Electronic Submission of Payment Requests.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll free number.) In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tanya Reid, Procurement Policy Service (003A2A), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 461–7178. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On July 7, 2009, VA published a notice, in the **Federal Register** at 74 FR 32223, of a class deviation to Federal Acquisition Regulation (FAR) 32.905 (48 CFR 32.905), which added an interim electronic invoicing clause in the VA Acquisition Regulation (VAAR). The interim clause strongly encourages contractors to voluntarily submit invoices electronically, which VA determined would improve the accuracy and efficiency of payment processing. Under this interim clause, contractors who choose to use electronic invoicing have three options to submit payment requests in electronic form: (1) Electronic Invoice Presentment and Payment System; (2) American National Standards Institute (ANSI) X12 electronic data interchange (EDI) formats; or (3) another electronic form as prescribed by the contract administration office and the designated agency office. VA's notice regarding interim, optional electronic invoicing noted VA intended to initiate notice-and-comment rulemaking to amend the VAAR to make electronic invoicing mandatory.

Mandatory electronic invoice submission is necessary to enhance compliance and/or consistency with a long history of rules and regulations governing the accuracy, timeliness, and cost-effectiveness of the Federal Government's payment process.

In 1982, Congress enacted the Prompt Payment Act (''Act''), Public Law 97–177, to require Federal agencies to pay their bills on a timely basis, to pay interest penalties when payments are made late, and to take discounts only when payments are made by the discount date. The Act, as amended, is found at 31 U.S.C. Chapter 39. To implement the Act, the Office of Management and Budget (OMB) issued Circular A–125 (''Prompt Payment '') in August 1982 (47 FR 37321). In response to changes to the Act that Congress made in the Prompt Payment Act Amendments of 1988, Public Law 100–496, OMB revised Circular A–125 in December 1989 (54 FR 52700). On June 17, 1998, OMB requested public comments on proposed revisions to Circular A–125 (63 FR 33000). The Circular was updated to reflect the increased use of electronic commerce in the Federal Government and in the private sector, including electronic financial systems and electronic funds transfer. OMB responded to the comments that were received on the proposed revisions, issued final revisions to its Prompt Payment Circular, and codified these revisions in new part 1315 of 5 CFR (64 FR 52580). With the incorporation of the Prompt Payment rules into 5 CFR part 1315, OMB rescinded Circular A–125.

The prompt payment rules at 5 CFR part 1315 address the increased use of electronic commercial financial systems and promote the use of government credit cards and accelerated payment methods. This proposed rule enhances compliance with 5 CFR part 1315 by requiring the use of electronic commerce. Electronic invoice submission replaces payment delays from traditional postal delivery with immediate electronic transmission of data. As a result, VA's ability to make timely payments, reduce interest penalties on late payments, and increase the dollar amount of discounts realized from prompt payment is improved.

FAR subpart 32.9 (48 CFR part 32.9) prescribes policies, procedures, and clauses for implementing the prompt payment regulations at 5 CFR part 1315. In relevant part, FAR 32.903 requires federal agencies to establish policies and procedures necessary to implement FAR subpart 32.9, and provides the agencies the latitude to prescribe additional standards for establishing invoice payment due dates necessary to support agency programs and foster prompt payment to contractors as well as the latitude to adopt different payment procedures in order to accommodate unique circumstances, provided that such procedures are consistent with the policies in OMB's prompt payment regulations. This proposed rule enhances compliance with FAR 32.903 by requiring electronic invoice submission. Electronic invoice submission replaces payment delays from traditional postal delivery with immediate electronic transmission of data. By eliminating delays associated with traditional processing, electronic submission fosters the prompt payment of invoices to contractors.

FAR 32.905(b)(1) defines the specific data elements that must be included on a proper invoice. Electronic invoice submission ensures invoice validity by employing automated data validation. Automated data validation enforces data element accuracy and completeness. Invalid invoices are immediately returned to the contractor for correction without the delays associated with traditional postal delivery.

VA's proposed requirement for contractors to use electronic invoicing when submitting payment requests supports several of the principal purposes stated in section 2 of the E-Government Act of 2002, Public Law 107–347, including promoting the use of the Internet and other information technologies to provide increased opportunities for citizen participation in Government, improving the ability of the Government to achieve agency missions and program performance goals, reducing costs and burdens for businesses and other Government entities, and transforming agency operations by utilizing, where appropriate, best practices from public and private sector organizations. Further, section 202(b)(3) of the E-Government Act of 2002 requires Federal agencies to develop performance measures that demonstrate

how electronic government enables progress towards agency objectives, strategic goals, and statutory mandates, and specifically directs agencies to consider: (1) Customer service; (2) agency productivity; and (3) the adoption of innovative information technology, including the appropriate use of commercial best practices. VA anticipates that this rulemaking requiring contractors to use electronic invoicing to submit payment requests would reflect positively when rated against the aforementioned performance measures given that it would ensure superior customer service, increase agency productivity, and be consistent with the longstanding best practice of electronic invoicing and direct deposit in the commercial marketplace.

The Improper Payments Information Act of 2002, Public Law 107–300, enacted on Nov. 26, 2002, as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA), Public Law 111–204, enacted on July 22, 2010, requires Federal agencies to annually review the programs it oversees and determine if those programs and activities may be susceptible to significant erroneous payments. Section 2(h)(4) of IPERA requires the head of each agency to conduct a financial management improvement program, consistent with rules prescribed by the Director of OMB. In conducting the program, the head of the agency shall, as the first priority of the program, address problems that contribute directly to agency improper payments and may seek to reduce errors and waste in other agency programs and operations.

Executive Order 13520 of November 20, 2009 (''Reducing Improper Payments'') directed the Federal Government to make every effort to confirm that the right recipient is receiving the right payment for the right reason at the right time. This proposed rule would address problems that contribute to improper payments such as data entry errors, manual processing errors, incorrect vendor selection, duplicate payments, and payment delays while eliminating the waste associated with traditional payment processing.

Other Federal Government departments and agencies have implemented similar electronic invoice submission requirements. In January 2004, the Department of Defense updated the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect the new electronic invoicing mandate. DFARS 252.232–7003 (48 CFR 252.232–7003) outlines the electronic invoice submission process for contractor payments. In 2006, the U.S. Government Accountability Office issued a report to Congressional Committees entitled ''DoD Payments to Small Businesses: Implementation and Effective Utilization of Electronic Invoicing Could Further Reduce Late Payments'' (GAO–06–358). The report confirmed the effectiveness of electronic invoicing in eliminating paper and redundant data entry; improving data accuracy; reducing the number of lost or misplaced documents; and ultimately, improving timely payments to contractors.

The U.S. Department of the Interior issued a special notice mandating electronic submittal of invoices and exchange of payment information to its suppliers of goods and services beginning in May 2011. The U.S. Department of the Treasury mandated electronic invoicing for its commercial vendors by the end of fiscal year 2012.

VA proposes to amend the VAAR by adding subpart 832.10 and clause 852.273–76 to implement mandatory electronic invoicing as part of its strategic plan to improve the commercial vendor payment process. The automated data validation, digital transmission, and expedited payment and processing would reduce the errors inherent in a manual invoice processing system, thereby reducing improper payments. Expedited payment processes would allow VA to take advantage of prompt payment discounts offered by its vendors thereby reducing the cost of goods and services furnished VA while simultaneously reducing the cost to contractors of manual invoice processing. As a result, VA would achieve compliance and consistency with all applicable laws governing the invoice payment process and use of information technologies.

This proposed amendment to the VAAR is anticipated to reduce the errors in the processing of contractor payments by including automated invoice data validation checks. VA's electronic invoicing system would check the contractor-submitted invoice data against contract invoice requirements and automatically refer improper or erroneous invoices back to the contractor for immediate correction. This would facilitate timely correction of administrative errors and timely payment of contractors when coupled with the existing Electronic Funds Transfer procedure (bank direct deposit) in use by VA. Automated invoice data validation checks would reduce the manual processing burden and consequent errors for both government and contractor personnel and reduce the risk of improper payment. These same data validation processes would ensure payment requests comply with applicable laws. In addition, electronic invoicing would expedite the payment process, and thereby, permit VA to take greater advantage of discounts afforded by contractors for early payment. The proposed benefits of electronic invoice submission to the contractor community would include speedier payments of balances due, as well as reduced costs due to the elimination of postage fees, and related material and supply expenses.

Currently, approximately 25 percent of the vendor community submits electronic payment requests to the VA Financial Services Center using one of two data transmission methods. Some contractors use VA's Electronic Invoice Presentment and Payment System. Other contractors use systems that rely on the standard EDI transaction sets. These methods of data transmission are discussed in more detail below.

Under proposed VAAR 832.1003–1 and VAAR 852.273–76(c), electronic invoices would be submitted by the Internet using either: (1) VA's Electronic Invoice Presentation and Payment System, or (2) any system that conforms to the X12 EDI formats established by the Accredited Standards Center (ASC) and chartered by ANSI. These are the same methods that many VA contractors are voluntarily using under VA's current interim electronic invoicing clause. See 74 FR 32223. VA's Electronic Invoice Presentation and Payment System allows invoice submission through two methods. The first method is an internet-based webform template that expands the ability of smaller contractors to utilize electronic invoicing and allows a contractor to directly upload invoice data that automatically populates VA payment systems. The second method directly interfaces with the contractor's billing system and transmits invoice data to VA payment systems. The U.S. ANSI X12 is the predominant set of standards defining the structure, format, and content of business transactions conducted through EDI. ANSI X12, chartered more than 30 years ago, develops and maintains EDI standards. Access to VA's Electronic Invoice Presentation and Payment System would be provided to contractors at no cost.

As an alternative to using the VA Electronic Invoice Presentation and Payment System, proposed VAAR 832.1003–1(b) and VAAR 852.273–76(c)(2) would also permit contractors to submit electronic invoices using any system that conforms to X12 EDI

formats established by ASC and chartered by ANSI. This would allow contractors some flexibility in deciding how they want to communicate with VA. For example, some contractors may already have a system established that is compatible with above-mentioned EDI requirements in order to communicate with other federal agencies. Those contractors would be able to use that same system to submit electronic invoices to VA. Additionally, purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

In proposed VAAR 832.1003(b) and VAAR 852.273–76(e), VA proposes to include five exceptions to the mandatory use of electronic invoicing by contractors. VA proposes to allow contracting officers to require contractors to submit payment requests by mail, through the United States Postal Service, in the following circumstances. First, contracting officers may direct that contractors submit invoicing by mail for awards that are made to foreign vendors for work performed outside the United States because foreign vendors may lack Internet access, familiarity with, or ability to process an electronic invoice with the standard commercial protocols and methods in the proposed clause. Second, contracting officers may direct that contractors submit invoicing by mail for classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information. In such cases, the potential damage far outweighs any efficiencies or benefits to be gained by electronic processing. Third, contracting officers may direct that contractors submit invoicing by mail for contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies because such contracts may be performed in areas and under circumstances where Internet availability and electronic invoicing are not practical. Fourth, contracting officers may direct that contractors submit invoicing by mail for contracts awarded by contracting officers for solicitations or contracts in which the designated agency office (DAO) is a VA entity other than the VA Financial Services Center in Austin, Texas. Fifth, contracting officers may direct that contractors submit invoicing by mail for solicitations or contracts awarded by contracting officers in cases where the DAO does not have electronic invoicing capability as described above.

Proposed VAAR 832.1003–2 would require a contracting officer to insert the proposed contract clause, VAAR 852.273–76, Electronic Submission of Payment Requests, in all solicitations and contracts. The proposed VAAR 852.273–76 would require the electronic submission of invoices for contracts unless the contracting officer determines that one or more of the exceptions at VAAR 832.1003(b) applies. In cases where an exception would apply, the contracting officer would provide invoice mailing instructions to the contractor. The VA Financial Services Center would serve as the DAO for commercial goods and services purchased by VA, and would be the only entity which operates the electronic invoicing capabilities as described above. Accordingly, VAAR 832.1003(b)(4) allows an exception to the electronic invoice requirement for solicitations or contracts in which the DAO is a VA entity other than the VA Financial Services Center in Austin, Texas.

Public Comments

VA welcomes public comments on all aspects of the proposed rule, however, the Department is specifically interested in feedback on the following areas: (1) While VA's voluntary compliance program has been in effect for 3 years, the VA is soliciting comment on whether a final rule should include an appropriate phase-in period for electronic reporting requirements; (2) The Department is seeking input on whether the proposal would create any significant burdens or transition costs for contractors; if so what types of costs or burdens might be imposed?; (3) While VA generally believes that the rapid pace of technological change has eliminated many challenges to full electronic commerce and internet access for contractors e.g. both current and potential federal government registrants are already required to register in the Centralized Contractor Registry (CCR), the VA is interested in comments on whether an exemption process should be included in the final rule; and, (4) Finally, VA is seeking comment on whether the elimination of the ''other electronic means'' option previously available under VA's voluntary program would create any undue burdens for contractors.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by OMB, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. The Secretary acknowledges that this proposed rule could affect some small entities; however, the economic impact is not anticipated to be significant and is expected to be outweighed by the positive economic impact of the proposed rule. Small entities should realize a positive economic impact as a result of electronic invoice submission due to the avoidance of traditional invoicing costs such as postage and mailing supplies. VA's proposed data transmission methods for electronic invoice submission would accommodate all existing accounts receivable/billing systems that contractors are currently using to submit electronic invoices to VA. As a result,

no additional hardware or software purchases by contractors are necessary to submit electronic invoices. Additionally, the VA electronic invoice payment and presentment system is provided to all contractors free of charge. No negative economic impact has been reported by small entities voluntarily using electronic invoice submission in accordance with the existing interim electronic invoicing clause in the VAAR. In 2006, the U.S. Government Accountability Office issued a report to Congressional Committees entitled ''DoD Payments to Small Businesses: Implementation and Effective Utilization of Electronic Invoicing Could Further Reduce Late Payments'' (GAO–06–358). The report confirmed the effectiveness of electronic invoicing in eliminating paper and redundant data entry; improving data accuracy; reducing the number of lost or misplaced documents; and ultimately, improving timely payments to small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Paperwork Reduction Act

This proposed rule does not impose any additional information collection requirements requiring approval of OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. Collections of information referenced in VAAR Parts 832 and 852 have previously been approved in accordance with OMB prompt payment regulations at 5 CFR Part 1315. See 64 FR 52580–01. Collections relating to the submission and payment of invoices are approved under OMB Control Numbers 9000–0070 and 0102, which govern the submission of adequate documentation to support contractor requests for payment.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Program

There is no Catalog of Federal Domestic Assistance program number and title for the program in this proposal.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on February 24, 2012, for publication.

List of Subjects

48 CFR Part 832

Government procurement.

48 CFR Part 852

Government procurement; Reporting and recordkeeping requirements.

Dated: April 12, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 48 CFR chapter 8 as follows:

CHAPTER 8—DEPARTMENT OF VETERANS AFFAIRS

Subchapter E—General Contracting Requirements

PART 832—CONTRACT FINANCING

1. The authority citation for part 832 continues to read as follows:

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

2. Add subpart 832.10 to read as follows:

Subpart 832.10—Electronic Invoicing Requirements

832.1001 General.
832.1002 Definitions.
832.1003 Electronic Payment Requests.
832.1003–1 Data Transmission.
832.1003–2 Contract Clause.

Subpart 832.10—Electronic Invoicing Requirements

832.1001 General.

This subpart prescribes requirements and procedures for submitting and processing payment requests in electronic form.

832.1002 Definitions.

As used in this subpart:

(a) *Contract financing payment* has the meaning given in FAR 32.001.

(b) *Designated agency office* has the meaning given in 5 CFR 1315.2(m).

(c) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods identified in VAAR 832.1003–1. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests.

(d) *Invoice payment* has the meaning given in FAR 32.001.

(e) *Payment request* means any request for contract financing payment or invoice payment submitted by a contractor under a contract.

832.1003 Electronic Payment Requests.

(a) The contractor shall submit payment requests in electronic form unless directed by the contracting officer to submit payment requests by mail. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(b) The contracting officer may direct the contractor to submit payment requests by mail, through the United States Postal Service, to the designated agency office for:

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

832.1003–1 Data Transmission.

The contractor shall submit electronic payment requests through:

(a) VA's Electronic Invoice Presentment and Payment System (See Web site at *http://www.fsc.va.gov/einvoice.asp.*); or,

(b) A system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) chartered by the American National Standards Institute (ANSI). The X12 EDI Web site (*http://www.x12.org*) includes additional information on EDI 810 and 811 formats.

832.1003–2 Contract Clause.

The contracting officer shall insert the clause at 852.273–76, Electronic Submission of Payment Requests, in all solicitations and contracts.

Subchapter H—Clauses and Forms

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501, 8127, 8128, and 8151–8153; 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 852.2—Texts of Provisions and Clauses

4. Add 852.273–76 to subpart 852.2 to read as follows:

852.273–76 Electronic Submission of Payment Requests.

As prescribed in 832.1003–2, insert the following clause:

Electronic Submission of Payment Requests (XXX 2012)

(a) *Definitions.* As used in this clause—

(1) *Contract financing payment* has the meaning given in FAR 32.001.

(2) *Designated agency office* has the meaning given in 5 CFR 1315.2(m).

(3) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests.

(4) *Invoice payment* has the meaning given in FAR 32.001.

(5) *Payment request* means any request for contract financing payment or invoice payment submitted by the contractor under this contract.

(b) *Electronic Payment Requests.* Except as provided in paragraph (e) of this clause, the contractor shall submit payment requests in electronic form. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(c) *Data Transmission.* A contractor must ensure that the data transmission method and format are through one of the following:

(1) VA's Electronic Invoice Presentment and Payment System. (See Web site at *http://www.fsc.va.gov/einvoice.asp.*)

(2) Any system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) and chartered by the American National Standards Institute (ANSI). The X12 EDI Web site (*http://www.x12.org*) includes additional information on EDI 810 and 811 formats.

(d) *Invoice requirements.* Invoices shall comply with FAR 32.905.

(e) *Exceptions.* If, based on one of the circumstances below, the contracting officer directs that payment requests be made by mail, the contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. Submission of payment requests by mail may be required for:

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

(End of clause)

[FR Doc. 2012–9269 Filed 4–17–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1108 and 1109

[STB Docket No. EP 699]

Assessment of Mediation and Arbitration Procedures

AGENCY: Surface Transportation Board.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board has proposed regulations that would require Class I and Class II rail carriers to participate in the Board's arbitration program, unless they file a prior written notice with the Board on an annual basis opting out of the program. By contrast, Class III rail carriers wishing to participate in the Board's arbitration program could file a request for arbitration with the Board under this docket at any time, or could voluntarily agree to participate in arbitration on a case-by-case basis. A shipper wishing to participate in the Board's arbitration program could so inform the Board on a case-by-case basis following the filing of a complaint. Pursuant to the Paperwork Reduction Act and Office of Management and Budget regulations, the Board now seeks comments regarding certain information pertaining to the proposed arbitration rules.

DATES: Comments are due by June 18, 2012.

ADDRESSES: Comments may be submitted either via the Board's e-filing process or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 699, 395 E Street SW., Washington, DC 20423–0001. Copies of written comments received by the Board will be posted to the Board's Web site at *http://www.stb.dot.gov* and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street SW., Washington, DC. Copies of the comments will also be available by contacting the Board's Chief Records Officer by telephone at (202) 245–0236 or by mail at 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Virginia Strasser at (202) 245–0275. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking in *Assessment of Mediation and Arbitration Procedures,* EP 699 (STB served Mar. 28, 2012),[1] the Surface Transportation Board has proposed regulations that would require Class I and Class II rail carriers to participate in the Board's arbitration program, unless they file a prior written notice with the Board on an annual basis opting out of the program. Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board now seeks comments regarding: (1) Whether the particular collection of information described below and in greater detail at 77 FR 19,591 is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or

[1] The Notice of Proposed Rulemaking was published in the **Federal Register** on April 2, 2012. (77 FR 19,591).

other forms of information technology, when appropriate.

The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, wherever possible. 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. The proposed modifications to the Board's existing rules 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 mediation rules do not impose a new information collection on the public. Rather, 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 grant mediation requests of parties to disputes.

The proposed changes to the arbitration rules, however, do impose a new information collection with regard to rail carriers. Class I and Class II carriers would be deemed to have agreed voluntarily to participate in the Board's proposed arbitration program unless they ''opt out.'' To opt out, any such carrier would be required to file a notice with the Board, under Docket No. EP 699, notifying the Board of its opt-out decision, no later than 20 days after this proposed rule took effect. Any such carrier not submitting a notice by this deadline would be deemed to be a participant in the Board's arbitration program. Should the proposed rules take effect, a Class I or Class II carrier wishing to opt out of the Board's arbitration program would be required to file an opt-out notice with the Board no later than January 10 of each calendar year. Such carriers not opting out by this deadline would become participants in the Board's proposed arbitration program during that calendar year. Participating carriers could also opt out of the arbitration program at any time by providing 90 days' notice to the Board. Class I and Class II carriers that had opted out would be able to opt back into the proposed arbitration program at any time by filing a notice with the Board that would take effect immediately. They could also participate in arbitration on a case-by-case basis.

In contrast, Class III rail carriers would not be deemed to have agreed to participate in the proposed arbitration program unless they were to opt in by filing a written notice in Docket No. EP 699, so informing the Board. Such notice could be filed at any time and would take effect immediately. A Class III carrier would remain a participant in the proposed arbitration program thereafter unless it were to file an opt-out notice with the Board. Such notice would take effect 90 days after filing. Like Class I and Class II carriers, Class III carriers could also voluntarily agree to participate in arbitration on a case-by-case basis.

Shippers would choose to participate in arbitration of the proposed program-eligible disputes on a case-by-case basis following the filing of a complaint whose subject matter would be arbitration program-eligible under the proposed rule.

This proposed rule, which is detailed in the Board's decision and **Federal Register** notice referenced above is being submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11.

List of Subjects

49 CFR Part 1108

Administrative practice and procedure, Railroads.

49 CFR Part 1109

Administrative practice and procedure, Maritime carriers, Motor carriers, Railroads.

Decided: April 13, 2012.

Jeffrey Herzig,

Clearance Clerk.

Appendix A

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

Description of Collection

Title: Assessment of Mediation and Arbitration Procedures.

OMB Control Number: 2140–XXXX.

STB Form Number: None.

Type of Review: New collection.

Respondents: Class I, Class II, and Class III railroads.

Number of Respondents: A maximum of 650.

Estimated Time per Response: 1.0 hour.

Frequency: Annually.

Total Burden Hours (annually including all potential respondents): 650 hours.

Total ''Non-Hour Burden'' Cost: None identified.

Needs and Uses: Under 49 U.S.C. 721(a), the Board has the authority to prescribe regulations to carry out its statutory authority. The proposed information collection is intended to encourage greater use of arbitration as a means to resolve certain types of disputes before the Board, by establishing an arbitration program in which Class I and Class II rail carriers would agree in advance to participate in binding arbitration of those disputes unless they file an opt-out notice with the Board on an annual basis. Class III rail carriers may inform the Board of their interest in participating in this arbitration program by filing an opt-in notice at any time. Failure to collect this information would impede the Board's ability to establish the proposed arbitration program. The Board has authority to collect information from rail carriers under 49 U.S.C. 11145(a).

Retention Period: Information in this report will be maintained on the Board's Web site for a minimum of one year and will be otherwise maintained by the Board for a minimum of two years.

[FR Doc. 2012–9324 Filed 4–17–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 110901553–2072–01]

RIN 0648–BB41

Endangered and Threatened Species; Proposed Delisting of Eastern DPS of Steller Sea Lions

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

ACTION: Proposed rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (ESA), we, NMFS, issue this proposed rule to remove the eastern distinct population segment (DPS) of Steller sea lions from the List of Endangered and Threatened Wildlife. After receiving two petitions to delist this DPS, we completed a comprehensive review of the status of the eastern DPS of Steller Sea Lions. Based on the information presented in the draft Status Review, the factors for delisting in section 4 (a)(1) of the ESA, the objective recovery criteria in the 2008 Recovery Plan, and the continuing efforts to protect the species, we have

determined, subject to further consideration following public comment, that this DPS has recovered and no longer meets the definition of a threatened species under the ESA: it is not in danger of extinction or likely to become endangered throughout all or a significant portion of its range within the foreseeable future. Thus, we find that the delisting of the DPS, as requested by the two petitions, is warranted. This rule also proposes technical changes that would recodify existing regulatory provisions and which are necessary to clarify that existing regulatory protections for the western distinct population segment of Steller sea lions will continue to apply. We seek public comments on this proposed action, the draft Status Review, and the draft Post-Delisting Monitoring Plan.

DATES: Comments must be submitted to NMFS by June 18, 2012. Requests for public hearing must be made in writing and received by June 4, 2012.

ADDRESSES: Send comments to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–BB41, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Hand-delivery:* Assistant Regional Administrator, Protected Resources Division, NMFS, Alaska Regional Office, Attn: Ellen Sebastian, Juneau Federal Building, 709 West 9th Street, Room 420A, Juneau, AK 99802–1668.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Facsimile (fax):* (907) 586–7557.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The proposed rule, maps, draft Status Review report and other materials relating to this proposal can be found on the Alaska Region Web site at: *http://alaskafisheries.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Jon Kurland, NMFS, Alaska Region, (907) 586–7638; or Lisa Manning, NMFS, Office of Protected Resources, (301) 427–8466.

SUPPLEMENTARY INFORMATION:

ESA Statutory Provisions, Regulations and Policy Considerations

Pursuant to the ESA and the Administrative Procedure Act, an interested person may petition for the listing or delisting of a species, subspecies, or DPS of a vertebrate species which interbreeds when mature (5 U.S.C. 553(e), 16 U.S.C.1533(b)(3)(A)). ESA-implementing regulations issued by NMFS and the U.S. Fish and Wildlife Service (FWS) also establish procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of listed species (50 CFR 424.01).

Once we receive a petition to delist a species, the ESA requires the Secretary of Commerce (Secretary) to make a finding on whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (16 U.S.C. 1533(b)(3)(A)). In the context of a petition to delist a species, the ESA-implementing regulations provide that ''substantial information'' is that amount of information that would lead a reasonable person to believe that delisting may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists, we take into account several factors, including any information noted in the petition or otherwise readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)) and published promptly in the **Federal Register.** If the Secretary of Commerce (Secretary) finds that the petition presents substantial information that may warrant the requested action, the Secretary must conduct a status review of the species concerned and, within 12 months of the receipt of the petition, make a finding whether the petitioned action is warranted. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

In determining whether to delist a species, subspecies, or DPS, the ESA and implementing regulations require that we consider the following ESA section 4(a)(1) factors in relation to the definition of a threatened species (16 U.S.C. 1533(a)(1) and 1533(c)(2); 50 CFR 424.11(d)):

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) The over-utilization of the species 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.

These are the same factors that we must consider when making an initial determination whether to list a species, subspecies or DPS as a threatened or endangered. The ESA regulations require that a species listed as endangered or threatened be removed from the list if the best scientific or commercial data available indicate that the species is no longer endangered or threatened because it has recovered (50 CFR 424.11(d)).

''Foreseeable Future''

A Status Review and the delisting process need to determine that the species' abundance, survival, and distribution, taken together with the threats (i.e., ESA section 4(a)(1) listing factors), no longer render the species ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The ESA uses the term ''foreseeable future'' to refer to the time over which identified threats are likely to impact the biological status of the species. The duration of the ''foreseeable future'' in any circumstance is inherently fact-specific and depends on the particular kinds of threats, the life-history characteristics, and the specific habitat requirements for the species under consideration. The existence of a potential threat to a species and the species' response to that threat are not, in general, equally predictable or foreseeable. Hence, in some cases, the ability to foresee a potential threat to a species is greater than the ability to foresee the species' exact response, or the timeframe of such a response, to that threat. For purposes of making this 12-month finding, the relevant consideration is whether the species' population response (e.g., changes in abundance, distribution, survival or recruitment), is foreseeable, not merely whether the emergence of a potential threat is foreseeable. The foreseeable future extends only so far as we are able to reliably predict the species' population response to a particular threat. As in the draft Status Review analysis, we consider the extent to which we can foresee the species' response to each threat.

''Significant Portion of its Range''

NMFS and FWS recently published a draft policy to clarify the interpretation of the phrase ''significant portion of the range'' in the ESA definitions of ''threatened'' and ''endangered'' (76 FR 76987, December 9, 2011). The draft policy consists of the following four components:

1. If a species is found to be endangered or threatened in only a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the ESA's protections apply across the species' entire range.

2. 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.

3. The range of a species is considered to be the general geographical area within which that species can be found at the time FWS or NMFS makes any particular status determination. This range includes those areas used throughout all or part of the species' life cycle, even if they are not used regularly (e.g., seasonal habitats). Lost historical range is relevant to the analysis of the status of the species, but it cannot constitute a significant portion of a species' range.

4. Where a species is not endangered or threatened throughout all its range but is endangered or threatened within a significant portion of its range, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The Services are currently reviewing public comment received on the draft policy. While the Services' intent ultimately is to establish a legally binding interpretation of the language ''significant portion of its range,'' the draft policy does not have legal effect until such time as it may be adopted as final policy. However, we find that the discussion and conclusions set forth in the draft policy are consistent with our past practice as well as our understanding of the statutory framework and language.

We specifically reiterate several points set forth in the draft policy. ''The Act does not define 'significant' as it relates to SPR, and the legislative history does not elucidate Congressional intent. Dictionary definitions of 'significant' provide a number of possible meanings; one of the most prominent is 'important' '' (76 FR 76993, December 9, 2011). We conclude that ''a definition of 'significant' that is biologically based best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation'' (76 FR 76993). The definition of ''significant'' set forth above:

> ''* * * emphasize[s] the biological importance of the portion to the conservation of the species as the measure for determining whether the portion is ''significant.'' [F]or that reason, [it] describe[s] the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. By recognizing the species itself as the reference point for determining whether a portion of the range is ''significant,'' we properly give priority to the use of science and biology for decision-making in status determinations, consistent with the Act's requirement to use the best available scientific and commercial data in determining the status of a species (16 U.S.C. 1533(b)(1)(A)). This definition [is] based on the principles of conservation biology [and] is well within the expertise of [NMFS] to apply'' (76 FR 76993).

To determine if a species should be listed because of its status in only a portion of its range, we ''first determine whether that portion is so important to the species as a whole that its hypothetical loss would render the species endangered rangewide. If the answer is negative, that is the end of the inquiry: the portion in question is not significant'' and the species does not qualify for listing on the basis of its status in that portion of its range (76 FR 76994). This definition does not inherently make the statutory phrase ''significant portion of its range'' redundant. Rather, the ''definition leaves room for listing a species that is not currently imperiled throughout all of its range'' (76 FR 76995).

We have considered the draft policy as non-binding guidance in evaluating whether the eastern DPS of Steller sea lions is threatened or endangered in a significant portion of its range. In developing a final rule, we will consider public comments on our evaluation of ''significant portion of its range'' for this species.

Distinct Population Segment Policy

To be considered for listing under the ESA, a group of organisms must constitute a ''species,'' which the act defines to include ''* * * any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature'' (16 U.S.C. 1532 (16)). Thus, an ESA-listing (or delisting) determination can address a species, subspecies, or a distinct population segment of a vertebrate species.

In 1996, NMFS and FWS released a joint policy on recognizing distinct vertebrate population segments to outline the principles for identifying and managing a DPS under the ESA (DPS Policy; 61 FR 47222; February 7, 1996). Under the DPS Policy, both the discreteness and significance of a population segment in relation to the remainder of the species to which it belongs must be evaluated. A population segment of a vertebrate species 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.

If a population segment is considered discrete under one or more of the above conditions, its biological and ecological significance is then considered in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity. This consideration may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique for 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.

Background

The following sections provide a brief history of efforts to manage and conserve the eastern DPS of the Steller sea lion under the ESA and through the Recovery Plan for the Steller Sea Lion. We also discuss the petitions to delist this species and the subsequent draft Status Review that supports the determination that the delisting of this population segment is warranted. We summarize the basis of our determination that the eastern DPS is no longer a threatened species, as supported by the Status Review.

Specifically, we summarize the abundance and health of the population, the present distribution and population estimates across its range; and, as required by the ESA, we summarize those factors currently affecting the population. We conclude by discussing the agency's plans to continue to monitor, study, and evaluate the biology and the health of the eastern DPS of Steller sea lions should delisting occur.

ESA Listing History

On April 5, 1990, in response to a petition from the Environmental Defense Fund and 17 other organizations, we published an emergency interim rule to list the Steller sea lion as a threatened species under the ESA, to begin rulemaking to make that listing permanent, and to request public comment on the action (55 FR 12645). In this emergency interim rule, we held that the Steller sea lion population was declining in certain Alaskan rookeries (by 63 percent since 1985 and by 82 percent since 1960) and the declines were spreading to previously stable areas and accelerating. Furthermore, the cause of these declines could not be determined. The listing of the species as threatened was therefore necessary to prevent its extinction.

That emergency interim rule implemented the following emergency conservation measures to aid recovery: (1) A program to estimate the monthly level of incidental killing of Steller sea lions in certain fisheries from data of fishery observer programs; (2) aggressive enforcement of the emergency regulation; (3) establishment of a recovery program, including the establishment of a recovery team; (4) prohibition of discharging a firearm near or at Steller sea lions; (5) buffer zones around rookeries, none of which were within the breeding range of the eastern DPS; and (6) a quota for lethal incidental take in fisheries west of 141° W longitude. On April 10, 1990, the FWS took emergency action (55 FR 13488) to add the Steller sea lion to the List of Endangered and Threatened Wildlife for 240 days. On July 20, 1990, we published a proposed rule to list the Steller sea lion as a threatened species (55 FR 29793), and on November 26, 1990, we published the final rule listing the Steller sea lion as threatened under the ESA (55 FR 49204). On December 4, 1990, FWS followed suit by publishing a final rule to add the Steller sea lion to the List of Endangered and Threatened Wildlife (55 FR 4005).

Identification of Distinct Population Segments

In 1990, in the Final Rule to list, we considered the entire Steller sea lion species as a single population, including those in areas where abundance was increasing or not declining significantly, because at the time scientists did not have sufficient information to consider animals in different geographic regions as separate populations. Similarly, the first Steller Sea Lion Recovery Plan, released in 1993, did not distinguish two separate population segments, but identified recovery tasks, reclassification criteria, and delisting criteria for the species as a whole. Then, in late 1994, the Steller Sea Lion Recovery Team re-convened to evaluate the adequacy of ongoing research and management, and recommended recognizing two distinct population segments, east and west of 144° W, based on demographic and genetic dissimilarities. The Team further recommended elevating the listing status of the western population segment to endangered status and keeping the eastern population segment listed as threatened.

Accepting these recommendations, in 1997, we formally identified two distinct population segments (DPSs) of Steller sea lions under the ESA—a western DPS and an eastern DPS. The eastern DPS consists of all Steller sea lions from breeding colonies located east of 144° W longitude, and the western DPS consists of all Steller sea lions from breeding colonies located west of 144° W longitude (50 CFR 223.102; 50 CFR 224.101(b)). We classified the western DPS as endangered due to its persistent population decline. The eastern DPS was classified as threatened, because the population's abundance was relatively stable and uncertainty existed concerning possible declines in pup production (62 FR 24345; May 5, 1997). Accordingly, the FWS made this revision to the List on June 5, 1997 (62 FR 30772). Further information on the identification of the two population segments may be found in those final rules.

As part of the Status Review, we examined the best available data to determine whether the existing DPS structure of the taxonomic species remained valid. This analysis was completed by our Alaska Fisheries Science Center in May 2011, and is provided as Appendix 1B to the draft Status Review (NMFS 2012). The analysis confirmed that the eastern and western DPSs are both discrete and significant and thus meet the criteria of the DPS Policy.

As explained in detail in Appendix 1B, there is extensive morphological, ecological, behavioral, and genetic evidence that the two DPSs are discrete. For example, the population genetics of Steller sea lions have been studied extensively since the final listing in 1997, and these newer data confirm the genetic discreteness of the eastern and western DPSs (e.g., Bickman *et al.* 1998). Philips *et al.* (2009) concluded that the existing data are actually sufficient to justify a subspecies classification for the eastern and western DPSs. Analyses of mitochondrial DNA for eastern rookeries from California also indicate there is no genetic basis to further subdivide the California portion from the eastern DPS (Bickman 2010). More specifically, this study indicates this portion of the population is genetically highly variable and includes only mitochondrial DNA haplotypes known from the eastern DPS. Because the eastern DPS constitutes about 47% of the global population, and its loss would eliminate all breeding areas from Southeast Alaska to Central California, the eastern DPS is considered significant to the species as a whole (NMFS 2010; Appendix 1B). Thus, the DPS analysis confirmed the validity of the two currently identified distinct population segments.

Status Review and Petitions To Delist

On June 29, 2010, we initiated the first 5-year status review of the eastern DPS of Steller sea lion under the ESA and, eight days later, opened a public comment period (June 29, 2010, 75 FR 37385; July 7, 2010, 75 FR 38979). A 5-year status review is intended to ensure that the listing classification of a species is accurate and is based on the best scientific and commercial data available concerning the past, present, and future threats to the listed species. During the initial comment period following the initiation of the 5-year review of the eastern DPS, we received two petitions to delist this species: one on August 30, 2010, from the States of Washington and Oregon; and one on September 1, 2010, from the State of Alaska. Both petitions contend that the eastern DPS of Steller sea lions has recovered, is not in danger of extinction now, and is not likely to become endangered in the foreseeable future.

We considered these two petitions in making the required 90-day finding and found that the petitions present substantial information that the petitioned action may be warranted, necessitating a status review of the

eastern DPS (75 FR 77602; December 13, 2010). We provided a 60 day comment period in connection with this finding. We completed a draft Status Review to address all issues required in a 5-year review and to inform a determination of whether delisting is warranted. The draft Status Review underwent independent peer review by four scientists with expertise in population ecology and management of eastern DPS Steller sea lions. Peer reviewer comments were incorporated into the draft Status Review, which is available online at *http://www.fakr.noaa.gov/protectedresources/stellers/edps/status.htm*.

Recovery Plan

The most recent Recovery Plan for both the eastern and the western DPSs of Steller sea lions (NMFS 2008) includes specific, objective, measurable criteria for determining when the eastern DPS has recovered sufficiently to warrant delisting. The first criterion requires that the population increase at an average annual growth rate of three percent per year for 30 years. The thirty-year time period provides confidence that the increase in natality (the ratio of live births to the larger population) and survival support the population growth rate, and that the recovery is robust enough to sustain the population over multiple environmental regimes. As explained in the Recovery Plan, the 30-year time period reflects three generations and a sustained, three percent growth rate over this time period would assure managers that survival and reproduction were robust. The Recovery Plan also identifies ESA Listing Factor Criteria, organized by the ESA section 4(a)(1) factors identified above. For some of these criteria, the Recovery Plan recommends that certain actions be achieved prior to delisting. These criteria provide a framework in which to consider new threats or new information on existing threats.

Based on a review of the recovery criteria and on new information that has become available since publication of the 2008 Recovery Plan, we find that those criteria continue to reflect the best available and most up-to-date information on the biology of the species and its habitat. We therefore conclude that these criteria, together with consideration of the statutory listing factors, remain appropriate standards on which to base the decision whether to delist this species.

Evaluation of Demographic/Biological Criterion

In 1997, when we recognized the two distinct population segments of Steller sea lions, scientists were uncertain about the population trend for the eastern DPS—some portions of the range had been increasing for years but declines in pupping had been noted in other regions. As described in the Recovery Plan, when we changed the status of the western DPS to endangered, the eastern DPS remained listed as threatened species because accurate data were not yet available over a sufficiently long time period to support a conclusion that the increasing population trend was, in fact, indicative of a robust and recovered population. We selected the biological recovery criterion for the eastern DPS to assure that data were collected over a long enough period of time to provide assurance that survival and reproduction were robust. As described below, the best available information indicates that this criterion has been met.

The Recovery Plan (NMFS 2008) noted the best available information indicated that the overall abundance of Steller sea lions in the eastern DPS has increased for a sustained period of at least three decades. The best available information also indicates that pup production has increased significantly, especially since the mid-1990s. Researchers estimate that about 11,000 pups were produced in the eastern DPS in 2002 (NMFS 2008). Based on these data, they provided a ''general'' estimate of total abundance for this DPS of about 46,000–58,000, noting that this estimate was imprecise (NMFS 2008). For the 25-year period between 1977 and 2002, researchers estimated that overall abundance of the eastern DPS of Steller sea lion had increased at an average rate of 3.1 percent per year (NMFS 2008).

New pup and non-pup count data are available from most portions of the range. Between 2002 and 2009, we conducted surveys in southeast Alaska, and the Department of Fisheries and Oceans Canada surveyed British Columbia. Counts of non-pups were made in 2008 by aerial survey in Washington, and aerial photographic surveys were flown in Oregon (through 2008), and in California.

The best available information indicates the eastern DPS has increased from an estimated 18,040 animals in 1979 (90% CI: 14,076–24,761) to an estimated 63,488 animals in 2009 (90% CI: 53,082—80,497); thus an estimate of an overall rate of increase for the eastern DPS of 4.3% per year (90% confidence bounds of 1.99%—7.33%; NMML 2012). Moreover, given the observed data, the probability that the overall growth rate was >3.0% was 0.84 (NMML 2012).

Based on the best available information for non-pup and pup trend data and related population abundance estimates, and subject to further consideration following public comment, we conclude that the biological (demographic) criterion in the 2008 Recovery Plan has been met. Furthermore, an evaluation and update of the trend data used in the extinction risk analysis indicates that the risk of extinction is very low throughout most of the range of the eastern DPS of Steller sea lions.

In Southeast Alaska, pup production has increased from 5,510 in 2005 to 7,442 in 2009. It increased at an average of 5 percent per year since the mid-1990s, and at 3.6 percent per year since the late 1970s. Counts of non-pups at trend sites have increased significantly at 1.4 percent since 1982.

In British Columbia, pup production has been increasing at nine percent per year since the mid-1990s and has increased significantly at 3.9 percent since the early 1970s. Non-pups have increased significantly at 3.5 percent per year since the early 1970s.

In Washington, abundance remains lower than historical levels; however, recent preliminary survey data reports increasing Steller sea lion numbers at haul-out areas as well as an increasing number of newborn pups at several locations over recent years.

Results of the 2009 Oregon and California aerial survey indicate that pup production in Oregon has increased at three percent per year since 1990. Pup production in California has been increasing at five percent per year between 1996 and 2009, with the number of non-pups reported as stable.

Stability in the non-pup portion of the overall California population and the lack of recolonization at the southernmost portion of the range (San Miguel Island rookery) is likely a response to a suite of factors including a climate induced northward range shift and competition for space on land (haulouts and rookery sites) and possibly competition for prey with other more temperately adapted pinniped species that have experienced explosive growth over the past three decades (California sea lions and northern elephant seals). While the California portion of the eastern DPS likely had its lowest abundance in the 1980s, recovery throughout the rest of the eastern DPS to the north (in OR, WA, BC and southeast AK) was already underway in the 1980s. Recovery in California has lagged behind the rest of the DPS by 10–15 years, but this portion of the DPS's range has recently shown a positive growth rate (NMML 2012).

In accordance with our draft policy on ''significant portion of its range,'' we considered whether portions of the range of the eastern DPS qualified as significant portions (76 FR 76987, December 9, 2011). Our first step in this evaluation was to ''identify any portions of the range of the [DPS] that warrant further consideration'' (76 FR 77002; December 9, 2011). Rather than evaluating the ''significance'' of every conceivable portion of the species' range, we focused on those portions of the range where there is ''substantial information indicating that (i) the portions may be significant [within the meaning of the draft policy] and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future'' (76 FR 77002; December 9, 2011).

Here, we identified only one portion of the eastern DPS's range that warranted further consideration: the southern portion of the range in California. We specifically considered whether the southern portion of the range in California constituted a significant portion of the range, because the Recovery Plan indicated that there was concern over the performance of rookeries and haulouts in this portion of the range, especially in contrast to the growth observed in southeast Alaska. We also received two comments during the public comment period recommending that we look specifically at this portion of the range given its differing history. Given the absence of geographically concentrated threats and the observed population growth throughout the rest of the range, we did not specifically evaluate the ''significance'' of other portions of the range.

To evaluate whether the California portion of the range constitutes a significant portion, we examined the history and trends of this portion of the population and the overall eastern DPS. As mentioned above, abundance trends in the California portion of the eastern DPS's range have followed a different pattern than abundance trends in the more northerly portions of the range. Recovery throughout the rest of the range was already underway in the 1980's while the California portion of the eastern DPS remained in decline (i.e., before the California portion had reached its lowest abundance level). Additionally, abundance increases throughout the rest of the DPS began ten to fifteen years before abundance began to increase in California. Thus, available information does not support a conclusion that abundance declines in the California portion of the population would drive abundance declines in the rest of the DPS. Moreover, although two rookeries in California (San Miguel and Seal Rocks) have been ''lost,'' the pup production at other rookeries in California has increased over the last 20 years and, overall, the eastern DPS has increased at an average annual growth rate of 4.3% per year for 30 years. Thus, even though these rookeries may be lost, their loss did not result in a decline in abundance of Steller sea lions in the rest of California or in the rest of the eastern DPS. Given these and other data, we concluded that the southern portion of the range in California is not so substantial that its loss or decline would undermine the viability of the DPS as it exists today (NMFS 2012). Thus, subject to further consideration following public comment, we conclude that the California portion of the eastern DPS does not constitute ''a significant portion of the range.'' Additional discussion of this issue is provided in section 4.2.3 of the Status Review.

Evaluation of the ESA Listing Factors and Associated Recovery Criteria

The status of the eastern DPS was reviewed in the context of the ESA listing factors and the associated criteria set forth in the Recovery Plan (NMFS 2008). Below we summarize the information regarding status of the DPS according to each of these criteria and identify the steps taken by NMFS and others to accomplish the recommended actions set forth in the Recovery Plan. More detailed information can be found in the draft Status Review (NMFS 2012) and the Recovery Plan (NMFS 2008).

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of a Species' Habitat or Range

The 2008 Recovery Plan states that:

> The decline of the eastern population of Steller sea lions is in large part attributed to direct mortality from predator control programs and shooting by fishermen and others. This intentional killing of sea lions was a generally accepted behavior until recent years. In general, terrestrial habitat for the eastern population has been either protected or not impacted to any large degree based in large part on the remote areas occupied by sea lions. There may be some exceptions along the southern California coast. Prey resources currently appear to be adequate to support recovery. Future fisheries management and other marine resource management should specifically consider sea lion needs in their planning.

The Status Review also identifies five potential sources of threat under this factor:

1. Global Climate Warming and Ocean Acidification;
2. Indirect Fisheries Interactions;
3. Coastal Development and Disturbance;
4. Toxic Substances; and
5. Oil and Gas Development.

Global climate warming and ocean acidification pose a potential threat to the eastern Steller sea lion population from potential food web alteration, direct physiological impacts on prey species, or more generally, to changes in the composition, temporal and spatial distribution and abundance of Steller sea lion prey assemblages. If the underlying food webs are affected by ocean acidification and climate change, the eastern DPS of Steller sea lions would also likely be affected. Consideration of this issue is complicated by the rapidly evolving understanding of this complex threat, the uncertainty about how Steller sea lions might respond, and other factors. Available information suggests it is likely that global warming and ocean acidification may affect eastern North Pacific subarctic ecosystems before the end of this century; however, the magnitude, timing, and mechanism of the changes, and how they may affect the eastern DPS of Steller sea lion, are difficult to predict. While we recognize the potential that the eastern Steller sea lion could exhibit a population response to these potential changes in the future, given current information, we cannot identify any such specific effects that are likely to occur within the foreseeable future. Given the increasing population trends of the eastern DPS of Steller sea lion, the robust reproduction over a large range, and the relatively large population size, the available information suggests that global warming and ocean acidification are not impeding this population's overall viability and are not likely to cause it to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range (NMFS 2012).

There are numerous federal, state, and/or provincial commercial fisheries, recreational fisheries and subsistence fisheries within the range of the eastern DPS of Steller sea lion. These include fisheries for salmon, herring, demersal shelf rockfish, ling cod, and black and blue rockfish in state waters of southeast Alaska, fisheries for herring, hake, sardines, salmon, and groundfish in British Columbia, salmon and herring in state waters off Washington and Oregon, and groundfish fisheries along the US west coast in the US EEZ of the northeast Pacific Ocean. Mechanisms by which fisheries can have indirect effects (e.g., nutritional stress) on Steller sea lions have been reviewed extensively in the scientific literature and in recent

NMFS actions (e.g., 75 FR 77535, December 13, 2010). Given the sustained significant increases in non-pup abundance and increases in pup production of eastern DPS Steller sea lions concurrent with the ongoing prosecution of these fisheries, current and anticipated fisheries management procedures and regulatory mechanisms, there is no indication that fisheries are directly or indirectly competing with eastern DPS Steller sea lions to the point where the level of fisheries related competition constitutes a threat to the survival or recovery of the eastern DPS of Steller sea lions. Subject to further consideration following public comment, we conclude the indirect effects of these fisheries are not likely to cause the eastern DPS to become in danger of extinction in the foreseeable future throughout all or a significant portion of its range.

Coastal development, such as tourism, settlement, industry, shipping, and human population growth may lead to more noise, human presence and other outcomes that increase disturbance of Steller sea lions on terrestrial sites or in the water, or to their prey. We acknowledge the potential threat of further coastal development and increased human disturbance but note that protections against such disturbance exist and will likely remain in place under a variety of state and federal statutes. The prohibitions and penalties related to ''take'' in the Marine Mammal Protection Act are particularly relevant (MMPA; 16 U.S.C. 1371(a); section 101(a)) and our ability to authorize such take incidental to other activities, such as shipping, tourism, or other forms of coastal development. To authorize any such take, we must find that it will have no more than a negligible impact, which NMFS regulations define as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). In addition, we must prescribe permissible methods of taking as well as other means of affecting the least practicable adverse impact on affected marine mammal stocks and must impose monitoring and reporting requirements. Moreover, we follow long-established mechanisms to review proposed actions (e.g., construction projects) under the Clean Water Act, the National Environmental Policy Act, and other laws to provide recommendations to avoid or minimize impact to marine mammals. Subject to further consideration following public comment, we conclude that there is no current evidence indicating that human disturbance of Steller sea lions on or near coastal habitats is likely to cause the eastern DPS of Steller sea lion to become in danger of extinction throughout all or a significant portion of its range within the foreseeable future. In the event the eastern DPS is delisted from the ESA, significant regulatory mechanisms under the MMPA and other laws will continue to provide a means to eliminate or otherwise minimize possible adverse effects of human activity.

The 2008 Recovery Plan noted ''existing studies on Steller sea lions have shown relatively low levels of * * * heavy metals, and these levels are not believed to have caused high mortality or reproductive failure and are not considered impediments to Steller sea lion recovery.'' Studies conducted in Southeast Alaska and southern and central California have recognized there is potential for adverse consequences of high levels of contaminants (e.g., see Heitz and Barron 2001); however, much remains to be learned about the levels of these compounds and the physiological mechanisms and reproductive consequences of such substances in eastern DPS Steller sea lions. While it is important to continue to study and monitor the levels of key contaminants such as heavy metals and organochlorines in the eastern DPS of Steller sea lions, after reviewing available information, we do not find evidence that contaminants are likely to cause the eastern DPS of Steller sea lions to become in danger of extinction in the foreseeable future throughout all or a significant portion of its range.

We recognize that exploration and development of oil and gas reserves and transportation of oil within the eastern DPS Steller sea lion range have the potential to adversely affect portions of this DPS in the event of large spills. However, despite a history of active transportation operations, no such events have occurred to date within the breeding range of the eastern DPS (NMFS 2012). Given this history, continued or anticipated oil and gas related operations are not likely to cause the eastern DPS of Steller sea lion to become in danger of extinction throughout all or a significant portion of its range within the foreseeable future.

Based on the considerations for Factor A, and subject to further consideration following public comment, we conclude that the eastern DPS of Steller sea lion is not in danger of extinction throughout all or a significant portion of its range, nor likely to become so within the foreseeable future due to the present or threatened destruction, modification, or curtailment of its habitat or range. The following continued monitoring activities are included within a Post Delisting Monitoring Plan to provide periodic checks on possible effects of habitat related issues:

- Monitor and assess possible indirect effects of fishery removals via periodic health assessments, indices of body condition, survival of pups and juveniles, and pup-nonpup ratios.
- Conduct periodic contaminant sampling.

The Recovery Plan recommended that to provide assurance that delisting is warranted for the eastern population of Steller sea lion, threats to its habitat should be reduced through the following actions:

1. Marine habitats, particularly in regard to prey populations, must be maintained through appropriate fisheries management and control of contaminants.
2. Rookery and haulout sites need to be adequately protected (through state, federal, or private measures) to insure the continued use of these sites for pupping, breeding, attending young, and resting. Research and monitoring plans should be in place for all projects that have a high probability of negatively impacting sea lions in order to make sure that these activities do not result in harm to sea lions or their habitat.

The Status Review identified research and management programs that provide for inclusion of Steller sea lion habitat requirements within fisheries management and other programs. Ongoing federal fisheries management within the breeding range of the eastern DPS, agreement between the State of Alaska and NMFS regarding State fishery management (NMFS 2012; Appendix 2), ongoing research, law enforcement, and the Post Delisting Monitoring Plan (NMFS 2012; Appendix 3), as well as existing regulations that govern authorization of incidental take of marine mammals under the MMPA provide a means to maintain and monitor marine habitats and prey populations consistent with the above recommendations. Consistent with the primary goals of the MMPA, Magnuson Stevens Fishery Conservation and Management Act (MSFMCA), National Environmental Policy Act (NEPA), and other laws provide mechanisms to ensure human activities do not result in harm to sea lions or their habitat. To comply with the MMPA, projects that have a high probability of negatively impacting eastern DPS Steller sea lions would need to obtain authorization from NMFS

to incidentally harass or incidentally take Steller sea lions. NMFS imposes project-specific monitoring requirements for each incidental take authorization the agency issues under the MMPA.

Should it become necessary to protect specific habitat of the eastern DPS in the future, section 112 (a) of the MMPA provides NMFS the authority to develop additional and specific protections for Steller sea lion habitat. At the present time, existing protections afforded to eastern DPS Steller sea lion habitat are considered adequate. As described in both the Status Review and Recovery Plan, we have not identified any threats to the habitat of the eastern DPS that are likely to cause the species to become in danger of extinction in the foreseeable future throughout all or a significant portion of its range. Therefore, subject to further consideration following public comment, we conclude the actions recommended under this listing factor criterion have been accomplished and will continue to be accomplished on an ongoing basis.

Factor B: Overutilization for Commercial, Recreational, or Educational Purposes

The 2008 Recovery Plan stated that:

> Human-caused mortality of Steller sea lions includes subsistence harvest; incidental takes in fisheries, illegal shooting, entanglement in marine debris, and take during scientific research. In general, the MMPA provides adequate protection for sea lions from the eastern population. None of these factors now appear to be preventing recovery, although it would be appropriate to reduce the magnitude of these when possible.

While the level of subsistence harvest in Southeast Alaska has increased since 1998, reported levels are still very low and there is only a very limited subsistence harvest in Canada (NMFS 2012). Given the estimated population size and the related Potential Biological Removal level (PBR) defined under the MMPA for the eastern DPS of the Steller sea lion, and the levels of subsistence hunting in both Alaska and British Columbia, subsistence hunting is not likely to cause this population to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

The best available data indicate a minimum estimated mortality rate incidental to commercial and recreational fisheries (both U.S. and Canada) of 33.5 eastern DPS Steller sea lions per year, based on fisheries observer data (7.47 animals), opportunistic observations (24.2 animals), and stranding data (1.8 animals). This estimated level of mortality is just 1.4% of the Potential Biological Removal level calculated for the eastern DPS of Steller sea lions at 2,378 animals. We are not aware of any information to suggest that the numbers of eastern DPS Steller sea lions taken incidental to commercial fishing will increase appreciably in the foreseeable future. We will continue to monitor take in selected fisheries and will, as recommended in the 2008 Recovery Plan, take steps to work cooperatively with the States to implement observer programs and other means to identify, evaluate, and reduce, levels of uncertainty in the estimates, and the occurrence, of incidental taking by commercial fishing. The level of incidental take in commercial fishing is not likely to cause the eastern DPS of Steller sea lion to become in danger of extinction throughout all or a significant portion of its range within the foreseeable future.

There are no commercial harvests or predator control programs in the United States in which Steller sea lions are authorized to be killed. Killing of marine mammals at aquatic farms is authorized by license in Canada; however, other regulations currently in place prevent aquatic farms from implementing that authority. Fewer than ten intentional killings of Steller sea lions per year were confirmed in Oregon and Washington from 2009–2010 (NMFS 2012). We acknowledge that the illegal take (e.g. shootings) of Steller sea lions likely has been underestimated. Nonetheless, the population estimates, which are based on visual surveys of live sea lions, inherently account for all sources of sea lion mortality, including illegally taken sea lions. Given the sustained population increase over the past 30 years, the current level of illegal take is not likely to cause the eastern DPS of Steller sea lions to become in danger of extinction throughout all or a significant portion of its range within the foreseeable future.

The levels of mortality from directed research activities and ''other human related sources'' are very small (e.g., 1.8 mortalities per year due to research and 5.0 mortalities per year from entanglements, hook ingestions, and other such sources) relative to the population size and are unlikely to pose a threat to the population for the foreseeable future.

Based on the considerations for Factor B, and subject to further consideration following public comment, we conclude that commercial, recreational, or educational activities are not likely to result in overutilization, nor are the combined effects of these threats likely to cause the eastern DPS of Steller sea lion to become in danger of extinction throughout all or a significant portion of its range within the foreseeable future.

The Recovery Plan did not recommend any specific action under this factor. Nonetheless, research and management programs are in place to monitor and regulate the threats identified under this factor. Consistent with the primary goals of the MMPA, these programs reduce the magnitude of the above types of takings. Therefore, subject to further consideration following public comment, we conclude the general goals articulated under this listing factor criterion have been accomplished.

Factor C: Diseases, Parasites, and Predation

The 2008 Recovery Plan noted that although Steller sea lions are taken by killer whales throughout their range there is no indication that killer whale predation is outside of normal background levels expected in this population at this abundance level. The Recovery Plan and the Status Review conclude that predation is not limiting recovery. The Recovery Plan recognized that diseases are known to occur within this population but appear to be limited to those endemic to the population and are unlikely to have population level impacts. Therefore no criteria were proposed to reduce disease and predation in the Recovery Plan.

New information documenting the appearance of phocine distemper virus within the range of the eastern DPS of Steller sea lions has become available since the 2008 Recovery Plan was completed. We are not aware of any information, however, that indicates that Steller sea lions have actually been infected with phocine distemper virus. Through established programs such as Marine Mammal Stranding Networks and ongoing collaborative research, routine sampling procedures to monitor the occurrence of this disease have been established and will continue. Appropriate responses (e.g., Unusual Mortality Event response) to critical events (e.g., a disease epidemic) would be implemented if the need arises. We are not aware of any evidence indicating the population is being adversely affected by disease agents, parasitism, or predation.

Based on the considerations for Factor C, and subject to further consideration following public comment, we conclude disease, parasitism, or predation are not likely to cause the eastern DPS of Steller sea lions to become in danger of extinction within the foreseeable future

throughout all or a significant portion of its range.

The Recovery Plan stated that diseases appeared ''to be limited to those endemic to the population and are unlikely to have population level effects.'' The Recovery Plan did not recommend any specific action to reduce the risk of disease. As mentioned above, there are a number of research and monitoring programs already in place or described in the Post Delisting Monitoring Plan that we consider adequate mechanisms for detecting, documenting, and responding to possible epizootic events, including any possible event that may result from the emergence of phocine distemper virus. Through these mechanisms, NMFS and its partners will take action as appropriate to address this issue, should it emerge. Therefore, subject to further consideration following public comment, we conclude that no additional action is necessary at this time to reduce potential threats under this factor.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

The MMPA provides a variety of existing regulatory measures designed to provide protection from unauthorized harassment or other forms of take. The MMPA requires that taking be regulated to prevent adverse effects on the annual survival rates or recruitment and to ensure the eastern DPS Steller sea lion continues to recover and remain a fully functioning part of the marine ecosystem. In addition, although we have not identified any serious threats to eastern DPS habitat in the foreseeable future, the MMPA provides a mechanism for future regulations to protect habitat of the eastern DPS if threats to its habitat emerge.

In addition to the MMPA, protections afforded by the location of key terrestrial and aquatic habitats within state and federal parks and marine protected areas (e.g., Oregon Islands National Wildlife Refuge, Olympic National Park, Farallon Islands National Marine Sanctuary, Three Arch Rocks National Wildlife Refuge) offer additional protections for the eastern DPS of Steller sea lions.

Federal regulations and management plans established by the Government of Canada also provide protection for eastern DPS Steller sea lions and their habitat within Canada (e.g., Marine Mammal Regulations of the Fisheries Act). Cooperative programs between the United States and Canada support research and monitoring necessary for ensuring the long term health and well being of this population within Canadian waters.

A number of other federal and state statutes including the Clean Water Act and the Marine Sanctuaries Act provide protection to wildlife and habitat and will likely foster the continued growth and stability of this population.

Based on the considerations for Factor D, and subject to further consideration following public comment, we conclude that the protections afforded by existing regulatory mechanisms make it unlikely that the eastern DPS will become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

To address and fulfill aspects of Factor D, the 2008 Recovery Plan noted the following: One potential threat to Steller sea lions is increased human disturbance in previously remote areas. Little is known about the potential impacts from changes to the physical environment, disturbance due to vessel traffic, or tourism related activities. Because of lack of information, it is not possible to quantify these threats. However, the potential threat from increased human disturbance highlights the need to keep regulatory mechanisms such as the MMPA in place to protect sea lions. Research and/or monitoring programs should be put into place to oversee activities that have the potential to negatively impact Steller sea lions. Other actions to protect haulout and pupping areas (as described under factor A) could provide substantial insurance against future impacts from development and anthropogenic disturbance. These actions are:

1. Agreement is reached with the State of Alaska which describes their fishery management plan, minimizes the take of Steller sea lions, and describes how future actions taken by the State will comport with the ESA and MMPA.

2. A Steller sea lion recovery coordinator is on staff at NMFS.

During the process of conducting the Status Review, NMFS and the Alaska Department of Fish and Game discussed the Recovery Plan recommendation for reaching an agreement clarifying how, in the event the eastern DPS of Steller sea lions is delisted, future State actions will continue to minimize the take of eastern DPS Steller sea lions and comport with the requirements of the MMPA. We recognize the action recommended by the Recovery Plan was somewhat unclear because once the stock is delisted ESA measures would no longer apply. The State of Alaska has provided correspondence that explains how existing processes followed by the State with respect to fisheries management successfully minimize take of eastern DPS Steller sea lions, will contribute to continued recovery of the stock, and will continue to comport with all aspects of the MMPA for the foreseeable future. We have evaluated this material (included as an appendix to the Status Review) and have agreed with the State of Alaska that the described plans and management actions satisfy the specific de-listing action recommended by the Recovery Plan.

NMFS also has a Steller sea lion coordinator on staff and has thus completed the second action identified in the Recovery Plan. Therefore, subject to further consideration following public comment, we conclude that the actions recommended under this listing factor have been accomplished.

Factor E: Other Natural or Anthropogenic Factors Affecting Its Continued Existence

Beyond those threats already discussed above, the Recovery Plan did not identify other threats that need to be identified, discussed, or considered under Listing Factor E. Based on information and analysis in the 2008 Recovery Plan and the Draft Status Review, we find that there are no other factors likely to cause the eastern DPS of Steller sea lions to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

The Recovery Plan recommended the following actions to ensure that factors do not develop that would threaten the persistence of the eastern DPS Steller sea lion:

1. An outreach program is established to educate the public, commercial fishermen and others to the continued need to conserve and protect Steller sea lions.

2. An Alaska stranding network is in place and functional.

Both NMFS and the Alaska Department of Fish and Game have outreach programs devoted to Steller sea lion conservation and management in an effort to educate commercial fishermen and the general public about the ongoing need to protect and conserve Steller sea lions. Various forms of outreach activities are conducted for the public, commercial fishermen, Alaska Native organizations, and others (Web pages, trainings, classroom presentations, videos, bumper sticker campaigns, interpretive displays, etc.). NMFS Alaska Region and Northwest Region both have Marine Mammal Stranding Programs and the stranding network is operational (e.g. see *http://www.alaskafisheries.noaa.gov/*

protectedresources/strandings.htm). Therefore the recommended actions under this listing factor criterion have been accomplished.

Conclusions

Based on information in the Recovery Plan and our review of new information discussed in the draft Status Review and summarized above, and subject to further consideration following public comment, we find the following:

- The biological (demographic) criterion for delisting identified in the Recovery Plan has been met.
- None of the potential threats evaluated under the five ESA listing factors, individually or cumulatively, is likely to result in the species becoming in danger of extinction within the foreseeable future throughout all or a significant portion of its range.
- The ESA Listing Factor Criteria set forth in the Recovery Plan have been met and each of the recommended actions under those criteria has been accomplished.
- In the event the eastern DPS is delisted, current measures under the MMPA, other laws, and regulations provide the protection necessary to ensure the continued recovery of the eastern DPS of Steller sea lions such that it is not likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

Based on the Draft Status Review's assessment of the demographic and ESA Delisting Factor Criteria, we believe the conclusions of the Recovery Plan remain valid: none of the factors that may negatively impact the dynamics of the eastern DPS appears to pose a threat to recovery, either alone or cumulatively, and the biological (demographic) and ESA-delisting criteria for the eastern DPS of the Steller sea lion have been met. Therefore, we find that removal of the eastern DPS of the Steller sea lion from the list of threatened species is warranted.

If the species is delisted through a final rule, we intend to implement a post-delisting monitoring plan, which would be followed for ten years beyond delisting, with the objectives of ensuring that necessary recovery actions remain in place and confirming the absence of threats to the population's continued existence.

Post-Delisting Monitoring Plan

We have developed a plan for continuing to monitor the population of the eastern DPS of Steller sea lion for 10 years following the proposed delisting. This draft Post Delisting Monitoring Plan is included as an appendix to the Status Review. The objective of the monitoring plan is to ensure that necessary recovery actions remain in place and to ensure the absence of threats to the population's continued existence. In part such monitoring efforts are already an integral component of ongoing research, existing stranding networks, and other management and enforcement programs implemented under the MMPA. These activities are conducted by NMFS in collaboration with other federal and state agencies, the North Pacific Fishery Management Council, university affiliates, and private research groups. As noted in the Status Review, many regulatory avenues already in existence provide for review of proposed projects to reduce or prevent adverse effects to Steller sea lions and for post project monitoring to ensure protection to Steller sea lions, as well as penalties for violation of the prohibition on unauthorized take under the MMPA. However, the addition and implementation of a specific Post-Delisting Monitoring Plan will provide an additional degree of attention and an early warning system to ensure that de-listing will not result in the re-emergence of threats to the population.

Description of Proposed Regulatory Changes

To implement this proposed action we propose to remove the eastern DPS of Steller sea lions from the list of threatened species in 50 CFR 223.102 of the Code of Federal Regulations.

Section 223.202 established various protective measures for threatened Steller sea lions, including a specific prohibition on discharging a firearm at or within 100 yards of Steller sea lions, prohibited vessel transit within 3 nautical miles of specific Steller sea lion rookery sites (all within the breeding range of the western DPS of Steller sea lions), and a list of certain exemptions to some of those same protections. Because 50 CFR 223.202 is directed at the ''threatened'' eastern DPS, we propose to delete it. However, 50 CFR 224.103(d) is directed at the ''endangered'' western DPS and currently incorporates these same protections by specific reference back to 50 CFR 223.202. If the eastern DPS of Steller sea lions is delisted and 50 CFR 223.202 is deleted, we would recodify these protections and exemptions for the western DPS within 50 CFR 224.103. Aside from removal of the prohibition on the discharge of firearms at or within 100 yards of Steller sea lions east of 144° W, these minor corrections to 50 CFR 224.103 do not result in any alteration to existing regulations for the endangered western DPS of Steller sea lions. Although we propose to remove the prohibition against the discharge of firearms at or within 100 yards of Steller sea lions east of 144° W, ''take'' of Steller sea lions, including take by harassment, will continue to be prohibited under the MMPA, unless specifically authorized by NMFS or exempted from the MMPA's moratorium on take.

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 (Pub. L. 106–554), 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 are obtaining independent peer review of this proposed rule; all peer reviewer comments will be addressed prior to dissemination of the final status review and publication of the final rule.

Classification

National Environmental Policy Act (NEPA)

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*, 657 F. 2d 829 (6th Cir. 1981), we have concluded that NEPA does not apply to ESA listing actions. (See NOAA Administrative Order 216–6.)

Executive Order (E.O.) 12866, Regulatory Flexibility Act, 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 analyses required by the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O. 12866. This proposed rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

E.O. 13132, Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific directives for consultation in situations where a regulation will preempt state law or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this proposed rule.

E.O. 13175, Consultation and Coordination With Indian Tribal Governments

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and co-management agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175—Consultation and Coordination with Indian Tribal Governments—outlines the responsibilities of the Federal Government in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), directs all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under E.O. 13175.

We intend to continue to coordinate with tribal governments and native corporations which may be affected by the proposed action. We will provide them with a copy of this proposed rule for review and comment, and offer the opportunity to consult on the proposed action.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

Endangered and threatened species.

Dated: April 12, 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 parts 223 and 224 are proposed to be amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

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

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

2. In § 224.103, revise paragraph (d) to read as follows:

§ 224.103 Special prohibitions for endangered marine mammals.

* * * * *

(d) *Special prohibitions relating to endangered Steller sea lion protection.*—(1) *General Prohibitions.* The following regulatory provisions shall apply to the western population of Steller sea lions:

(i) *No discharge of firearms.* Except as provided in paragraph (d)(2) of this section, no person subject to the jurisdiction of the United States may discharge a firearm at or within 100 yards (91.4 meters) of a Steller sea lion west of 144 °W longitude. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(ii) *No approach in buffer areas.* Except as provided in paragraph (d)(2) of this section:

(A) No owner or operator of a vessel may allow the vessel to approach within 3 nautical miles (5.5 kilometers) of a Steller sea lion rookery site listed in paragraph (d)(1)(iii) of this section;

(B) No person may approach on land not privately owned within one-half statutory miles (0.8 kilometers) or within sight of a Steller sea lion rookery site listed in paragraph (d)(1)(iii) of this section, whichever is greater, except on Marmot Island; and

(C) No person may approach on land not privately owned within one and one-half statutory miles (2.4 kilometers) or within sight of the eastern shore of Marmot Island, including the Steller sea lion rookery site listed in paragraph (d)(1)(iii) of this section, whichever is greater.

(iii) *Listed sea lion rookery sites.* Listed Steller sea lion rookery sites consist of the rookeries in the Aleutian Islands and the Gulf of Alaska listed in Table 1.

TABLE 1 TO § 224.103—LISTED STELLER SEA LION ROOKERY SITES [1]

Island	From		To		NOAA chart	Notes
	Lat.	Long.	Lat.	Long.		
1. Outer I	59°20.5 N	150°23.0 W	59°21.0 N	150°24.5 W	16681	S quadrant.
2. Sugarloaf I	58°53.0 N	152°02.0 W			16580	Whole island.
3. Marmot I	58°14.5 N	151°47.5 W	58°10.0 N	151°51.0 W	16580	SE quadrant.
4. Chirikof I	55°46.5 N	155°39.5 W	55°46.5 N	155°43.0 W	16580	S quadrant.
5. Chowiet I	56°00.5 N	156°41.5 W	56°00.5 N	156°42.0 W	16013	S quadrant.
6. Atkins I	55°03.5 N	159°18.5 W			16540	Whole island.
7. Chernabura I	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W	16540	SE corner.
8. Pinnacle Rock	54°46.0 N	161°46.0 W			16540	Whole island.
9. Clubbing Rks (N)	54°43.0 N	162°26.5 W			16540	Whole island.
Clubbing Rks (S)	54°42.0 N	162°26.5 W			16540	Whole Island.
10. Sea Lion Rks	55°28.0 N	163°12.0 W			16520	Whole island.
11. Ugamak I	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W	16520	E end of island.
12. Akun I	54°18.0 N	165°32.5 W	54°18.0 N	165°31.5 W	16547	Billings Head Bight.
13. Akutan I	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W	16520	SW corner, Cape Morgan.
14. Bogoslof I	53°56.0 N	168°02.0 W			16500	Whole island.
15. Ogchul I	53°00.0 N	168°24.0 W			16500	Whole island.
16. Adugak I	52°55.0 N	169°10.5 W			16500	Whole island.
17. Yunaska I	52°42.0 N	170°38.5 W	52°41.0 N	170°34.5 W	16500	NE end.
18. Seguam I	52°21.0 N	172°35.0 W	52°21.0 N	172°33.0 W	16480	N coast, Saddleridge Pt.
19. Agligadak I	52°06.5 N	172°54.0 W			16480	Whole island.

TABLE 1 TO § 224.103—LISTED STELLER SEA LION ROOKERY SITES [1]—Continued

Island	From		To		NOAA chart	Notes
	Lat.	Long.	Lat.	Long.		
20. Kasatochi I	52°10.0 N	175°31.5 W	52°10.5 N	175°29.0 W	16480	N half of island.
21. Adak I	51°36.5 N	176°59.0 W	51°38.0 N	176°59.5 W	16460	SW Point, Lake Point.
22. Gramp rock	51°29.0 N	178°20.5 W			16460	Whole island.
23. Tag I	51°33.5 N	178°34.5 W			16460	Whole island.
24. Ulak I	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W	16460	SE corner, Hasgox Pt.
25. Semisopochnoi	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E	16440	E quadrant, Pochnoi Pt.
Semisopochnoi	52°01.5 N	179°37.5 E	52°01.5 N	179°39.0 E	16440	N quadrant, Petrel Pt.
26. Amchitka I	51°22.5 N	179°28.0 E	51°21.5 N	179°25.0 E	16440	East Cape.
27. Amchitka I	51°32.5 N	178°49.5 E			16440	Column Rocks.
28. Ayugadak Pt	51°45.5 N	178°24.5 E			16440	SE coast of Rat Island.
29. Kiska I	51°57.5 N	177°21.0 E	51°56.5 N	177°20.0 E	16440	W central, Lief Cove.
30. Kiska I	51°52.5 N	177°13.0 E	51°53.5 N	177°12.0 E	16440	Cape St. Stephen.
31. Walrus I	57°11.0 N	169°56.0 W			16380	Whole island.
32. Buldir I	52°20.5 N	175°57.0 E	52°23.5 N	175°51.0 E	16420	Se point to NW point.
33. Agattu I	52°24.0 N	173°21.5 E			16420	Gillion Point.
34. Agattu I	52°23.5 N	173°43.5 E	52°22.0 N	173°41.0 E	16420	Cape Sabak.
35. Attu I	52°54.5 N	172°28.5 E	52°57.5 N	172°31.5 E	16681	S Quadrant.

[1] Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

(iv) *Commercial Fishing Operations.* The incidental mortality and serious injury of endangered Steller sea lions in commercial fisheries can be authorized in compliance with sections 101(a)(5) and 118 of the Marine Mammal Protection Act.

(2) *Exceptions*—(i) *Permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under paragraph (d)(1) of this section in accordance with and subject to the provisions of part 222, subpart C of this chapter—General Permit Procedures.

(ii) *Official activities.* The taking of Steller sea lions must be reported within 30 days to the Regional Administrator, Alaska Region. Paragraph (d)(1) of this section does not prohibit or restrict a Federal, state or local government official, or his or her designee, who is acting in the course of official duties from:

(A) Taking a Steller sea lion in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; or

(B) Entering the buffer areas to perform activities that are necessary for national defense, or the performance of other legitimate governmental activities.

(iii) *Subsistence takings by Alaska natives.* Paragraph (d)(1) of this section does not apply to the taking of Steller sea lions for subsistence purposes under section 10(e) of the Act.

(iv) *Emergency situations.* Paragraph (d)(1)(ii) of this section does not apply to an emergency situation in which compliance with that provision presents a threat to the health, safety, or life of a person or presents a significant threat to the vessel or property.

(v) *Exemptions.* Paragraph (d)(1)(ii) of this section does not apply to any activity authorized by a prior written exemption from the Director, Alaska Region, National Marine Fisheries Service. Concurrently with the issuance of any exemption, the Assistant Administrator will publish notice of the exemption in the **Federal Register**. An exemption may be granted only if the activity will not have a significant adverse affect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zones, and there is no readily available and acceptable alternative to or site for the activity.

(vi) *Navigational transit.* Paragraph (d)(1)(ii) of this section does not prohibit a vessel in transit from passing through a strait, narrows, or passageway listed in this paragraph if the vessel proceeds in continuous transit and maintains a minimum of 1 nautical mile from the rookery site. The listing of a strait, narrows, or passageway does not indicate that the area is safe for navigation. The listed straits, narrows, or passageways include the following:

Rookery	Straits, narrow, or pass
Akutan Island	Akutan Pass between Cape Morgan and Unalga Island.
Clubbing Rocks.	Between Clubbing Rocks and Cherni Island.
Outer Island ...	Wildcat Pass between Rabbit and Ragged Islands.

(3) *Penalties.* (i) Any person who violates this section or the Act is subject to the penalties specified in section 11 of the Act, and any other penalties provided by law.

(ii) Any vessel used in violation of this subsection or the Endangered Species Act is subject to forfeiture under section 11(e)(4)(B) of the Act.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

4. In § 223.102, the table is amended by removing and reserving paragraph (a)(2).

5. Redesignate all figures in § 223.202 to the end of § 224.103 (d)(1)(iii).

6. Section 223.202 is removed.

[FR Doc. 2012–9335 Filed 4–17–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 75
Wednesday, April 18, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a State Advisory Committee (SAC) meeting of the Louisiana Advisory Committee to the Commission will convene on Thursday, May 10, 2012 at 2 p.m. and adjourn at approximately 5 p.m. (CST). The meeting will convene at Louisiana State University, Hebert Law Center, 1 East Campus Drive, Suite 400, Baton Rouge, Louisiana 70803. The purpose of the meeting is to conduct a briefing and planning meeting to collect preliminary information concerning potential racial disparities in the high incarceration of African-Americans in state-operated prisons.

The meeting is open to the public or through the following toll-free call-in number 1(866) 364–7584, conference call access code number 68145841. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on May 3, 2012.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by June 11, 2012. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Regional Director, Central Regional Office, at (913) 551–1400, (or for hearing impaired TDD 913–551–1414), or by email to *frobinson@usccr.gov*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Central Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, April 13, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–9296 Filed 4–17–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 30–2012]

Foreign-Trade Zone 200—Mercer County, NJ; Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the County of Mercer, grantee of FTZ 200, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170–1173, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 12, 2012.

FTZ 200 was approved by the Board on March 11, 1994 (Board Order 683, 59 FR 13698, 03/23/94), and expanded on August 18, 2004 (Board Order 1346, 69 FR 52857, 08/30/04). The current zone project includes the following sites: *Site 1* (70 acres)—Mercer County Airport, 300 Scotch Road, Ewing; and, *Site 4* (882 acres)—Northwest Business Park, 100 New Canton Way, Robbinsville.

The grantee's proposed service area under the ASF would be Mercer County, New Jersey, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Philadelphia Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include Site 1 as a ''magnet'' site, Site 4 as a ''usage-driven'' site and to reduce the size of Site 4 by 813 acres. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting approval of a new ''usage-driven'' site: *Proposed Site 8* (64 acres)—Kenco Logistic Services LLC, 100 West Manor Way, Robbinsville. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 200's authorized subzone.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case

record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 18, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 2, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: April 12, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–9354 Filed 4–17–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–2–2012]

Foreign-Trade Zone 59, Temporary/Interim Manufacturing Authority, Novartis Consumer Health, Inc., (Pharmaceutical Product Manufacturing); Notice of Approval

On January 12, 2012, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board filed an application submitted by the Lincoln Foreign Trade Zone, Inc., grantee of FTZ 59, requesting temporary/interim manufacturing (T/IM) authority, on behalf of Novartis Consumer Health, Inc., to manufacture pharmaceutical products under FTZ procedures within FTZ 59—Sites 3 and 4, in Lincoln, Nebraska.

The application was processed in accordance with T/IM procedures, as authorized by FTZ Board Orders 1347 (69 FR 52857, 8/30/04) and 1480 (71 FR 55422, 9/22/06), including notice in the **Federal Register** inviting public comment (77 FR 4758, 1/31/2012). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures. Pursuant to the authority delegated to the FTZ Board Executive Secretary in the above-referenced Board Orders, the application is approved, effective this date, until March 27, 2014, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: March 27, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–9357 Filed 4–17–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on May 1, 2012, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than April 24, 2012.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 27, 2011 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: April 11, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–9351 Filed 4–17–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has determined that C. P. Vietnam Corporation is the successor-in-interest to C. P. Vietnam Livestock Corporation, and shall be accorded the same antidumping duty treatment as the original company for purposes of the antidumping duty order on certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'').

DATES: *Effective Date:* April 18, 2012.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4047.

Background

The Department published the antidumping duty order on shrimp from Vietnam on February 1, 2005.[1] C.P. Vietnam Livestock Co., Ltd. was granted separate rate status in the original investigation and the second

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005) (''*VN Shrimp Order*'').

administrative review.[2] In July 2008, during the fourth administrative review, the company converted from a limited liability company into a joint stock company, changing its name to C. P. Vietnam Livestock Corporation.[3] In September 2011, C. P. Vietnam Livestock Corporation changed its name to C. P. Vietnam Corporation, eliminating the word ''Livestock.''

On December 13, 2011, C. P. Vietnam Corporation requested that the Department conduct a changed circumstances review to determine whether C. P. Vietnam Corporation is the successor-in-interest to C. P. Vietnam Livestock Corporation. On February 1, 2012, the Department initiated the changed circumstances review of C. P. Vietnam Corporation and preliminarily determined that C. P. Vietnam Corporation is the successor-in-interest to C. P. Vietnam Livestock Corporation.[4] In the *Preliminary Results,* the Department invited interested parties to comment.[5] We received no comments or requests for a hearing from interested parties.

Scope of the Order

The scope of the order includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[6] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn *(Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp *(Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations (including dusted shrimp), which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.[7]

Final Results of Changed Circumstances Review

For the reasons stated in the *Preliminary Results,* and because the Department did not receive any comments on the *Preliminary Results* of this review, the Department continues to find that C. P. Vietnam Corporation is the successor-in-interest to C. P. Vietnam Livestock Corporation, for purposes of the antidumping duty cash-deposit rate. Accordingly, C. P. Vietnam Corporation shall receive the same antidumping duty treatment as C. P. Vietnam Livestock Corporation.

Notification

The Department will instruct U.S. Customs and Border Protection that the cash deposit determination from this changed circumstances review will apply to all shipments of the subject merchandise produced and exported by C. P. Vietnam Corporation entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. This deposit rate shall remain in effect until further notice.

This notice also serves as a reminder to parties subject to administrative 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.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216.

[2] *See VN Shrimp Order; see also Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Administrative Review,* 73 FR 52273 (September 9, 2008).

[3] *See 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).

[4] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation and Preliminary Results of Changed Circumstances Review,* 77 FR 4993 (February 1, 2012) (''*Preliminary Results*'')

[5] *See Preliminary Results* at 4994.

[6] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

[7] On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (''CIT'') decision in *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp.

Dated: April 11, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–9350 Filed 4–17–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (RE&EEAC) will meet via conference call on May 2 and May 3, 2012 to consider and vote on proposed recommendations from the Domestic Policy, Finance and Trade Subcommittees that address issues affecting U.S. competitiveness in exporting renewable energy and energy efficiency (RE&EE) products and services, such as access to finance and removal of trade barriers. The RE&EEAC will also review and vote on a draft letter to Secretary of Commerce, John Bryson, regarding the need for a strong domestic policy to encourage growth in the U.S. RE&EE markets as a strong base for exports. RE&EEAC members will review and discuss recommendations on May 2, 2012. Members will reconvene on May 3, 2012 to vote on recommendations.

DATES: May 2, 2012, from 10 a.m. to 2 p.m. Eastern Daylight Time (EDT); May 3, 2012 from 12 p.m. to 2 p.m. EDT.

ADDRESSES: The meeting will be held via conference call.

FOR FURTHER INFORMATION CONTACT: Brian O'Hanlon, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–3492; email: *brian.ohanlon@trade.gov.* This conference call is accessible to people with disabilities. Requests for auxiliary aids should be directed to OEEI at (202) 482–3889 at least 3 working days prior to the event.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the RE&EEAC pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) on July 14, 2010. The RE&EEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to enhance the international competitiveness of the U.S. RE&EE industries. The RE&EEAC held its first meeting on December 7, 2010 and several subsequent meetings throughout 2011 and 2012.

The meeting is open to the public. Members of the public wishing to attend the conference call must notify Mr. Brian O'Hanlon at the contact information above by 5 p.m. EDT on Thursday, April 26, in order to pre-register and receive call-in instructions. Please specify any request for reasonable accommodation by Thursday, April 26. Last minute requests will be accepted, but may be impossible to fill.

Any member of the public may submit pertinent written comments concerning the RE&EEAC's affairs at any time before or after the meeting. Comments may be submitted to *brian.ohanlon@trade.gov* or to the Renewable Energy and Energy Efficiency Advisory Committee, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, Room 4053; 1401 Constitution Avenue NW., Washington, DC 20230. To be considered during the meeting, comments must be received no later than 5 p.m. EDT on Thursday, April 26, 2012, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members, but may not be considered at the meeting.

Copies of RE&EEAC meeting minutes will be available within 30 days of the meeting.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2012–9305 Filed 4–17–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 120322215–2213–01]

Request for Technical Input—Standards in Trade Workshops

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Request for Workshop Recommendations.

SUMMARY: The National Institute of Standards and Technology (NIST) invites all interested parties, including U.S.-based manufacturers, U.S. industry and trade associations and federal government agencies, to submit recommendations and suggestions for workshops covering specific sectors and targeted countries or regions of the world where training in the U.S. approaches to development and use of standards, including assessment of conformity to standards, may facilitate trade, increase U.S. exports, and/or benefit U.S. industry. Standards in Trade (SIT) workshops are designed to introduce U.S. stakeholders to emerging standards and conformity assessment issues in other countries and regions; identify regulatory information and market access issues; and provide timely information to foreign officials on U.S. practices in standards, metrology and conformity assessment. Interested parties must consider Administration priorities outlined in the current National Export Strategy. NIST will offer a limited number of workshops each year. Most workshops will be scheduled for a 3 to 5 day period at NIST in Gaithersburg, Maryland. NIST will evaluate all recommendations and may use the suggested topics in planning its workshops, subject to the availability of resources. Additional guidance is available on the NIST Standards in Trade (SIT) workshop program Web page. This notice is not an invitation for proposals to fund grants, contracts or cooperative agreements of any kind.

DATES: Recommendations may be submitted at any time and will be considered on a quarterly basis.

ADDRESSES: All recommendations must be submitted to the Standards in Trade Workshop Program through a webform at *http://gsi.nist.gov/global/index.cfm/L1-4/L2-14.* The *National Export Strategy: Powering the National Export Initiative* is available at *http://trade.gov/publications/pdfs/nes2011FINAL.pdf.* NIST's Three-Year Programmatic Plan is available at *http://www.nist.gov/director/upload/nist-master-3-year-plan-fy2012-fy2014.pdf.* Additional information about the NIST Standards in Trade Workshop Program is available at *http://gsi.nist.gov/global/index.cfm/L1-4/L2-14.*

FOR FURTHER INFORMATION CONTACT: Standards in Trade Workshop Program Coordinator, Mary Jo DiBernardo, (301) 975–5503, *sit@nist.gov.*

SUPPLEMENTARY INFORMATION: In June 2011, the Secretary of Commerce released the *National Export Strategy: Powering the National Export Initiative.* The report reinforces the importance of U.S. exports of goods and services, which in 2010 totaled $1.84 trillion, an

increase of nearly 17% over 2009 levels, and supported more than 9 million jobs in the United States. In March 2010, President Obama issued an executive order creating the National Export Initiative, which calls for the doubling of U.S. exports by the end of 2014.

NIST's mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life. NIST's Three-Year Programmatic Plan for fiscal years 2012–2014 summarizes the current focus and priorities of the NIST programs.

Since 1995, U.S. industry has looked to the NIST Standards in Trade (SIT) program to provide opportunities for cooperation on important topics related to standards, conformity assessment and trade that are vital to the success of their businesses. SIT workshops are designed to introduce U.S. stakeholders to emerging standards and conformity assessment issues in other countries and regions; identify regulatory information and market access issues; and provide timely information to foreign officials on U.S. practices in standards, metrology, and conformity assessment. Improved understanding of U.S. standards, conformity assessment and regulatory practices by foreign governments and private sector officials helps to provide an important basis for improving trade opportunities in key foreign markets, particularly those where standards and conformity assessment practices differ substantially from those in the United States. Each SIT workshop is targeted to aid U.S. industry in becoming more competitive in foreign markets through increased transparency of market and regulatory requirements and/or promotion and use of international standards, U.S. approaches and information exchange, thus increasing trade opportunities and exports. The goals of the program are directly aligned with the U.S. Department of Commerce (DOC) and NIST missions.

In 2003, NIST began soliciting public input on topics for SIT workshops via the **Federal Register**. The SIT program criteria have since been updated to reflect the current priorities and initiatives of the Administration, DOC, and NIST. The process for submitting recommendations has also been updated.

To better inform NIST of timely topics for workshops, NIST solicits recommendations and suggestions from the public. To assist the public in formulating their suggestions, NIST poses the following questions to the public for their consideration in developing their workshop recommendations:

1. Recommending Organization and Primary Contact Information

Provide a primary point of contact, including the contact's name, organization, title, mailing address, telephone number and email address. Include a description of the recommending organization(s).

2. Recommended Workshop(s) and Principal Topics

What is the subject of the recommended workshop? Provide a description of the recommended workshop theme(s), industry sector(s) of focus, and targeted country or region. Provide a list of the suggested topics for the workshop and a description of each topic.

3. Goals and Objectives of Recommended Workshop

What are the recommended workshop goals and objectives to be attained? Include why they are important to U.S. industry and how they support new U.S. exports or sustain or expand current U.S. exports. Include a detailed list outlining the specific workshop objectives. Demonstrate the possibility of significant progress during and immediately after the recommended workshop(s), as well as lasting benefits extending beyond the recommended workshop(s).

4. U.S. Stakeholders

Who will likely participate at the recommended workshop and support the recommended workshop? Include a list of interested U.S. stakeholders, including U.S.-based manufacturers, U.S. industry trade associations, and federal, state and local government agencies. Additional stakeholders may include standards organizations, academia, professional societies, testing and certification organizations, etc.

5. Link to NIST and/or Other Federal Agencies

How is the recommended workshop linked to NIST activities and/or research and/or activities and/or research at other federal agencies, and what are the appropriate NIST or other agency organizational units, laboratories or programs? What is the relevance of the activity to NIST and/or other federal agencies? If known, identify the specific staff who could serve as the point of contact for each agency included in the recommendation and experts who could provide technical expertise and participate at the workshop.

6. Suggested Timing for Workshop(s)

What are some possible timeframes in which the recommended workshop might take place (e.g. fall 20XX, April–May 20XX)? Indicate if the workshop recommendation is time sensitive and, if so, provide an explanation (e.g. Is there a proposed regulation in another country that will have a significant bearing on U.S industry and U.S. exports? Is there a window of opportunity that will close by a certain date? Is there a relevant event that coincides with the recommended workshop?) How many workshops may need to occur over a defined period of time, if more than one, to achieve the stated goals and objectives outlined in Point 3? The recommended workshop should be not expected to start earlier than 6 months from the date the recommendation is submitted.

7. Expected Outcomes/Measures of Success

What are the expected outcomes and measures of the recommended workshop's success? Include a description of the following, including data and the sources of the data, where applicable:

a. Anticipated short and long-term benefits of the recommended workshop to U.S. industry for trade and market access;

b. Potential for future opportunities for collaboration and trade as a result of the recommended workshop; and

c. Desired short and long-term results of the recommended workshop and appropriate short and long-term measures for evaluating the success of the recommended workshop, including a suggested timeline.

All recommendations must address each of the above seven points. Applicants should also consider and may provide additional information on the following 2 points:

8. Additional Resources

What external funding, including cost share capability and in-kind cost sharing, is available to support the recommended workshop, and what is the source of this funding? Identify possible in-country partners if recommended workshop is to take place outside of the U.S.

9. Related Site Visits and Events

Workshops can include visits to relevant business sites or events. Provide a list of suggested site visit locations, events or other areas of interest and discuss the relevance of

each to the overall purpose of the recommended workshop's goals. NIST will consider the following when developing the workshops that it will offer: Does the recommended workshop align with the Administration and/or NIST priorities? Is the workshop recommendation compatible with or complementary to these priorities? Is the recommended country, countries or region of focus identified in the National Export Strategy as a key market (target market, next tier market or mature market)? Is the product sector export-intensive and/or have the potential to enhance U.S. export opportunities? Is the recommended country/region developing infrastructure? Is there a need for standards and conformity assessment to support the changes? Have or will new regulations be proposed that will impact market entry for U.S. industry? Is there a market access issue in a specific sector, country or region? If appropriate, is there support from a regulatory or other federal agency for the workshop recommendation? Is there a significant and possible long-term commitment from U.S. industry stakeholders to support the recommendation and the goals and objectives of the recommended workshop?

All recommendations must be submitted through the webform at *http://gsi.nist.gov/global/index.cfm/L1-4/L2-14.*

Dated: April 6, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–9254 Filed 4–17–12; 8:45 am]

BILLING CODE 3510–13–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 18 April 2012, at 10 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks, and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *staff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: April 11, 2012 in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2012–9167 Filed 4–17–12; 8:45 am]

BILLING CODE 6331–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0108]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. 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 reinstated information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 18, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the DLA Logistics Information Service, Attn: Mr. Robert A. Burrow, DLIS–LAE, 74 Washington Ave., N., Suite 7, Battle Creek, MI 49037–3084, or call Mr. Robert A. Burrow at (269) 961–4410.

Title; Associated Form; and OMB Number: Department of Defense Electronic Mall (EMALL) Web site; OMB Control Number 0704–TBD.

Needs and Uses: Each user of the DoD EMALL Web site must complete registration information in order to receive DoD EMALL access. Authorized users are able to register and log into the DoD EMALL Web site to shop, search, order, and make purchases.

Affected Public: Not-for-profit institutions; State, local, or Tribal governments.

Annual Burden Hours: 8,345.
Number of Respondents: 33,379.
Responses per Respondent: 1.
Average Burden per Response: .25.
Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

DoD EMALL is an Internet-based Electronic Mall, which allows customers to search for and order items from the government and commercial sources. DoD EMALL is a Department of Defense program operated by the Defense Logistics Information Service (DLIS). All users are required to register and be authenticated and authorized by a DLIS Access Administrator. Access DoD EMALL at: *https://www.dod-emall.dla.mil.*

Dated: April 13, 2012.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2012–9306 Filed 4–17–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0048]

U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

ACTION: Notice of proposed changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 19(b) and 22(b) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces.

DATES: Comments on the proposed change must be received within 30 days of the publication date of this notice.

ADDRESSES: You may submit comments, identified by docket number and title by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.*

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of the Court, telephone 202–761–1448.

Dated: April 12, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Rules 19(b)

The first sentences of Rules 19(b)(1), (2), and (3) currently read:

(b) Certificate for review/brief/answer/reply.

(1) *Article 62, UCMJ, cases.* In cases involving a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. 862, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no later than 30 days after the date of the decision of the Court of Criminal Appeals.

(2) *Extraordinary relief cases.* In cases involving a decision by a Court of Criminal Appeals on application for extraordinary relief filed therein, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no later than 30 days after the date of the decision of the Court of Criminal Appeals.

(3) *Other cases.* In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review filed by the Judge Advocate General shall be filed either (a) no later than 30 days after the date of the decision of the Court of Criminal Appeals (*see* Rules 22 and 34(a)), or (b) no later than 30 days after a petition for grant of review is granted.

The proposed changes to the first sentences of Rule 19(b)(1), (2) and (3) would read:

(1) *Article 62, UCMJ, cases.* In cases involving a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. § 862, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no later than 60 days after the date of the decision of the Court of Criminal Appeals.

(2) *Extraordinary relief cases.* In cases involving a decision by a Court of Criminal Appeals on application for extraordinary relief filed therein, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no later than 60 days after the date of the decision of the Court of Criminal Appeals.

(3) *Other cases.* In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review filed by the Judge Advocate General shall be filed either (a) no later than 60 days after the date of the decision of the Court of Criminal Appeals (*see* Rules 22 and 34(a)), or (b) no later than 30 days after a petition for grant of review is granted.

Rule 22(b)

The first sentences of Rule 22(b)(1), (2), and (3) currently read:

(b)(1) *Article 62, UCMJ, cases.* A certificate for review of a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. 862, shall be filed, together with a supporting brief in accordance with Rule 24, on behalf of the appellant no later than 30 days after the date of the decision of the Court of Criminal Appeals.

(2) *Extraordinary relief cases.* A certificate for review of a decision by a Court of Criminal Appeals on application for extraordinary relief filed therein shall be filed, together with a supporting brief in accordance with Rule 24, on behalf of the appellant, no later than 30 days after the date of the decision of the Court of Criminal Appeals.

(3) *Other cases.* In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review shall be filed either (a) no later than 30 days after the date of the decision of the Court of Criminal Appeals (*see* Rule 34(a)) or (b) no later than 30 days after a petition for grant of review is granted.

The proposed changes to the first sentences of Rule 22(b)(1), (2), and (3) would read:

(b)(1) *Article 62, UCMJ, cases.* A certificate for review of a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. 862, shall be filed, together with a supporting brief in accordance with Rule 24, on behalf of the appellant, no later than 60 days after the date of the decision of the Court of Criminal Appeals.

(2) *Extraordinary relief cases.* A certificate for review of a decision by a Court of Criminal Appeals on application for extraordinary relief filed therein shall be filed, together with a supporting brief in accordance with Rule 24, on behalf of the appellant, no later than 60 days after the date of the decision of the Court of Criminal Appeals.

(3) *Other cases.* In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review shall be filed either (a) no later than 60 days after the date of the decision of the Court of Criminal Appeals (*see* Rule 34(a)) or (b) no later than 30 days after a petition for grant of review is granted.

Comment: Rules 19(b) and 22(b) currently allow 30 days for the filing of certificates for review by the Judge Advocate General, although a service member is given 60 days to file a petition for grant of review. Extension requests are filed in nearly all of the cases in which a certificate is to be filed, and the Rules Advisory Committee has determined that the 30 days allowed by this rule is insufficient time to obtain the necessary approvals and to file the certificate.

This change to 60 days will not apply in those cases where the Court grants a petition for grant of review, and the government wishes to request the Judge Advocate General to file a certificate for review. In that event, the Judge Advocate General will continue to have 30 days from the date the petition is granted to file the certificate for review. The 30-day deadline in these cases should not be extended because it will slow the processing of the case by the Court, and it will be less onerous because the case is already before the Court, making it easier for the services to determine whether they wish to bring additional issues before the Court in those cases.

The proposed change contained in the **Federal Register** Notice of January 23, 2012, omitted the words ''(*see* Rules 22 and 34(a))'' from the change to Rule

19(b). The error is corrected in this notice. Also, the January 23, 2012, Notice did not include proposed changes to Rule 22(b), which contains the same filing deadlines for certificates for review that were in Rule 19(b). This notice provides the necessary proposed change to Rule 22(b) as well.

[FR Doc. 2012–9253 Filed 4–17–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Evaluation of State Vocational Rehabilitation Agency Administration of Supported Employment Programs

SUMMARY: The Vocational Rehabilitation (VR) Program provides a wide range of services to help individuals with disabilities to prepare for and engage in gainful employment. Eligible individuals are those who have a physical or mental impairment that results in a substantial impediment to employment, who can benefit from VR services for employment, and who require VR services.

DATES: Interested persons are invited to submit comments on or before May 18, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. 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 04796. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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: Evaluation of State Vocational Rehabilitation Agency Administration of Supported Employment Programs.

OMB Control Number: Pending.

Type of Review: New.

Total Estimated Number of Annual Responses: 80.

Total Estimated Number of Annual Burden Hours: 249.

Abstract: If a State is unable to serve all eligible individuals, priority must be given to serving individuals with the most significant disabilities. The program is funded through formula-based grants awarded by the Rehabilitation Services Administration (RSA) to State VR agencies to receive funding from the basic Title I formula grant program.

The Supported Employment (SE) Grant Program provides funding to assist States in developing and implementing collaborative programs with appropriate entities to provide SE services to individuals with the most significant disabilities who require SE services to achieve employment outcomes under Title VI Part B of the Rehabilitation Act for the SE State Grants Program. SE funds are used to supplement funds provided under the State VR grants program for the cost of providing SE services. Funds cannot be used to provide extended services necessary to maintain individuals in employment after the end of SE services, which usually do not exceed 18 months.

RSA proposes to conduct a national survey of all 80 state VR agencies. RSA seeks to evaluate how State VR agencies implement supported employment services for individuals with disabilities, how state VR agencies use Title VI Part B funds in conjunction with Title I funds to fund supported employment programs, and whether State VR agencies are effective in obtaining supported employment outcomes for individuals with disabilities. The evaluation also seeks to identify the factors that contribute to successful supported employment outcomes.

RSA will address the following objectives:

- Identify agency practices with respect to providing SE services;
- Determine how agencies use Title VI–B, Title I and other funds to provide SE; and
- Determine how agency practices affect the achievement of SE outcomes.

Dated: April 13, 2012.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–9308 Filed 4–17–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Small Business Innovation Research (SBIR) Program—Phase II—Grant Application Package

SUMMARY: This application package invites small business concerns to submit a Phase II application for the Small Business Innovation Research (SBIR) Program (CFDA 84.133). This is in response to Public Law 106–554, the ''Small Business Reauthorization Act of 2000, H.R. 5667'' enacted on December 21, 2000.

DATES: Interested persons are invited to submit comments on or before May 18, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. 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 04810. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537.

Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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: Small Business Innovation Research (SBIR) Program—Phase II—Grant Application Package.

OMB Control Number: 1820–0685.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 50.

Total Estimated Number of Annual Burden Hours: 3,750.

Abstract: The Small Business Reauthorization Act of 2000, H.R. 5667 requires certain agencies, including the U.S. Department of Education to establish a SBIR program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or research and development through a uniform, highly competitive, three-phase process each fiscal year.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: April 13, 2012.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–9310 Filed 4–17–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Assurance of Compliance—Civil Rights Certificate

SUMMARY: The Office for Civil Rights (OCR) has enforcement responsibilities under several civil rights laws, including Title VI, Title IX, Section 504, the Age Discrimination Act, and the Boy Scouts of America Equal Access Act. To meet these responsibilities, OCR collects assurances of compliance from applicants for Federal financial assistance from, and applicants for funds made available through, the U.S. Department of Education, as required by regulations. These entities include, for example, State educational agencies, local education agencies, and postsecondary educational institutions.

DATES: Interested persons are invited to submit comments on or before May 18, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. 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 04801. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Assurance of Compliance—Civil Rights Certificate.

OMB Control Number: 1870–0503.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 50.

Total Estimated Number of Annual Burden Hours: 17.

Abstract: If a recipient violates one or more of these civil rights laws, as stated in the Summary above, OCR and the U.S. Department of Justice can use the signed assurances of compliance in an enforcement proceeding.

Dated: April 11, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–9312 Filed 4–17–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Small Business Innovation Research (SBIR) Program—Phase I—Grant Application Package

SUMMARY: This application package invites small business concerns to submit a Phase I application for the Small Business Innovation Research (SBIR) Program (CFDA 84.133). This is in response to Public Law 106–554, the ''Small Business Reauthorization Act of

2000, H.R. 5667'' enacted on December 21, 2000.

DATES: Interested persons are invited to submit comments on or before May 18, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. 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 04809. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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: Small Business Innovation Research (SBIR) Program—Phase I—Grant Application Package.

OMB Control Number: 1820–0684.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 200.

Total Estimated Number of Annual Burden Hours: 9,000.

Abstract: The Small Business Reauthorization Act of 2000, H.R. 5667 requires certain agencies, including the U.S. Department of Education to establish a SBIR program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or research and development through a uniform, highly competitive, three-phase process each fiscal year.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: April 13, 2012.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–9309 Filed 4–17–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education (NACIE)

AGENCY: U.S. Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule for the upcoming public meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify the general public of the meeting. This notice also describes the functions of the Council. Notice of the Council's meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act.

Date and Time: May 2–3, 2012;

May 2, 2012—8 a.m.–5 p.m. Eastern Daylight Savings Time.

May 3, 2012—8 a.m.–5 p.m. Eastern Daylight Savings Time.

Location:

Washington, DC—Details about the meeting location will be posted on the Committee Web site on April 30, 2012.

Web site: www.NACIE-ED.org (To RSVP, and for NACIE Meeting Updates, and Final Agenda).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is authorized by Section 7141 of the Elementary and Secondary Education Act. The Council is established within the Department of Education to advise the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council that includes recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

One of the Council's responsibilities is to develop and provide recommendations to the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction that can benefit Indian children or adults participating in any program which could benefit Indian children. The purpose of this meeting is to convene the Council to continue its responsibilities for developing recommendations to the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act, and conduct discussions on the development of the report to Congress that should be submitted no later than June 30, 2012.

There will be an opportunity for public comment during this meeting on May 3 from 1:30 p.m.–3 p.m. Comments should pertain to the work of NACIE and/or the Office of Indian Education. Speakers will be allowed to comment for 3–5 minutes.

Individuals who will need accommodations for a disability in order

to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify Jenelle Leonard at (202) 401–3641, no later than Friday, April 27, 2012. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

FOR FURTHER INFORMATION CONTACT: Jenelle Leonard, Designated Federal Official, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: 202–205–2161. Fax: 202–205–5870.

A report of the activities of the meeting and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 21 days of the meeting. Records are kept of all Council proceedings and are available for public inspection at the Office of Indian Education, United States Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Monday–Friday, 8:30 a.m.–5 p.m. Eastern Daylight Time.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at (202) 512–0000.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Michael Yudin,

Acting Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2012–9378 Filed 4–17–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Long-Range Plan for Fiscal Years 2013–2017

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes the National Institute on Disability and Rehabilitation Research's (NIDRR's) Long-Range Plan (Plan) for fiscal years (FYs) 2013 through 2017. Pursuant to the Rehabilitation Act of 1973, as amended, the Department is required to develop a plan for NIDRR that outlines NIDRR's priorities for rehabilitation research, demonstration projects, training, and related activities, and explains the basis for these priorities.

DATES: We must receive your comments on or before June 18, 2012.

ADDRESSES: Address all comments about the proposed Plan to Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140, Potomac Center Plaza, Washington, DC 20202–2700.

If you prefer to send your comments by email, use the following address: *NIDRR-mailbox@ed.gov.* You must include the term ''Long-Range Plan'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Lynn Medley. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed Plan. To ensure that your comments have maximum effect in developing the final Plan, we urge you to identify clearly the specific area of the Plan that each comment addresses and to arrange your comments in the same order as the proposed Plan. We are particularly interested in comments on the establishment of the Rehabilitation Research Advisory Council (RRAC) described in the Introduction of the Plan.

During and after the comment period, you may inspect all public comments about the proposed Plan in Room 5140, 550 12th Street SW., Potomac Center Plaza (PCP), Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background: In developing the research agenda in the proposed Plan, NIDRR considered: the legislative mandate for the Plan; stakeholder suggestions and public input received via email and the Internet in response to the notice of proposed Long Range Plan published in the **Federal Register** on January 15, 2009 (Vol. 74, No. 10); public responses to a January 15, 2009, email solicitation to NIDRR grantees, past grant applicants, disability organizations, and other interested parties inviting comment on the January 15, 2009, **Federal Register** notice of proposed Long Range Plan; research and program recommendations from NIDRR grantee state of the science conferences; an assessment and related recommendations by the National Academy of Sciences (NAS), National Research Council, of NIDRR's priority-setting, peer review, and grant mechanisms; and a review by NAS of the products of a sample of 30 NIDRR grantees (National Academy of Sciences (2012), Review of Disability and Rehabilitation Research: NIDRR Grantmaking Processes and Products, Washington, DC: National Academies Press).

The purposes of the proposed Plan are:

(1) To describe the broad general principles that will guide NIDRR's policies and use of resources;

(2) To establish objectives for research and related activities from which annual research priorities can be formulated; and

(3) To describe how NIDRR will implement the Plan, i.e., the process by which NIDRR establishes annual priorities.

The authority for the Secretary to establish the Plan is contained in section 202(h) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(h)).

The proposed Plan is published as an attachment to this notice.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 13, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

National Institute on Disability and Rehabilitation (NIDRR) Proposed Long-Range Plan for Fiscal Years (FYs) 2013 Through 2017

Preface

The introductory section of the National Institute on Disability and Rehabilitation Research (NIDRR) Long-Range Plan 2013–2017 (Plan) provides basic background about NIDRR and the proposed plan. The background explains NIDRR's mission, its intention for the Plan, and how the Plan will shape NIDRR's priorities. The second section of the Plan provides a brief summary of the Plan's proposed goals and objectives. The third section of the Plan provides background information about NIDRR's legislative mandate and purpose; NIDRR's applied approach to disability and rehabilitation research; how that approach is improving the lives of individuals with disabilities; and how NIDRR's proposed grant mechanisms will structure NIDRR's research and development programs. Section four of the Plan provides detail and explanation of NIDRR's proposed goals and objectives for the next five years.

I. Introduction

NIDRR has a broad and complex mission. NIDRR must support the generation of new knowledge and promote its effective use to (1) improve the abilities of individuals with disabilities to participate in community activities of their choice and (2) to enhance society's capacity to provide opportunities and accommodations for these individuals. NIDRR fulfills its mission through research, development, and related activities designed to contribute to the independence, inclusion, employment, health, and functioning of individuals of all ages with all types and degrees of disability. As the number of Americans with disabilities is projected to increase substantially over the next two decades, the importance of fulfilling NIDRR's mission will only grow (Institute of Medicine, 2007. The future of disability in America. Washington, DC: National Academies Press).

NIDRR's proposed Long-Range Plan (Plan) includes priorities, goals, and objectives that will enable stakeholders to understand and comment upon the direction that NIDRR proposes for FYs 2013 through 2017. NIDRR proposes to begin implementing all proposed goals at the beginning of FY 2013. Over the life of the Plan, NIDRR will further refine the Plan's priorities, goals, objectives, and timelines. These refinements will occur as the evolution of science and technology, the needs of individuals with disabilities, and the input of interested stakeholders dictate, and as the completion of the funding cycles of current centers and projects allow. Proposed refinements will be published on NIDRR's Web site for public comment and review. NIDRR further proposes to establish and to actively solicit the guidance of the broadly based Rehabilitation Research Advisory Council (RRAC), which is authorized under Title II section 205(a) of the Rehabilitation Act of 1973, as amended. The proposed RRAC would engage individuals with disabilities and, as appropriate, their representatives; community rehabilitation and service professionals, including providers of assistive technologies; rehabilitation researchers and engineers; and other stakeholders to offer NIDRR ongoing advice to ensure that NIDRR programs reflect the principles that NIDRR has proposed for them. The three principles that NIDRR proposes to guide the implementation of the Plan and the administration of its programs are balance, quality, and relevance.

Balance refers to the management of NIDRR's resource allocations across three dimensions: (1) Type of disability; (2) three outcome domains of individual well-being (*i.e.,* employment, community living and participation, and health and function); and (3) whether NIDRR or the grant applicant defines the specific approach to a disability or rehabilitation research topic.

Quality refers to the scientific merit of the research and development activities, whatever the method employed, and the appropriateness of the methods to the topic, question, or problem being addressed.

Relevance refers to the likelihood that proposed research and development activities will make a substantial contribution to the well-being of individuals with disabilities, recognizing that the benefits of such activities may not always be direct or immediate.

NIDRR's peer review process will help increase the quality and relevance of NIDRR-funded research and development activities. NIDRR is committed to the goal that every eligible application for NIDRR funding will be reviewed by a knowledgeable and topically informed panel of experts in research methods, policy, services and supports, including individuals with disabilities or, as appropriate, family members.

NIDRR's priorities will be informed by assessments of the state of the science, policy and practice, the advice of the proposed RRAC, and the public's response to proposed priorities. NIDRR's portfolio of research and development activities will range from the identification of the needs and opportunities of individuals with disabilities to the widespread implementation of effective, evidence-based policies and practices that respond to those needs and opportunities. NIDRR recognizes that the development of effective, evidence-based policies and practices is as dependent on the exploratory stages of research as it is on experimental and quasi-experimental trials of potentially effective practices.

II. Summary of Plan's Proposed Goals and Objectives

NIDRR will maintain a balanced portfolio of high quality research and development centers and projects that address the most important problems and issues affecting individuals with disabilities and their families. As described further in the Plan, the following is a summary of NIDRR's proposed goals and objectives for FY 2013 through FY 2017.

Goal 1: Create a portfolio of research, development, and other activities that balances domains, populations of focus, and who, whether NIDRR or the grant applicant, defines the specific approach to a disability or rehabilitation research topic.

- Establish a balanced distribution of priorities focused on improved outcomes in the domains of

employment, community living and participation, and health and function.

- Establish a balanced distribution of priorities to address the needs of individuals with different disabilities, personal characteristics, and social circumstances.
- Expand field-initiated research and development opportunities to support innovation.

Goal 2: Support centers and projects that conduct well-designed research and development activities using a range of appropriate methods.

- Adopt a stages-of-research paradigm that will enhance NIDRR's efforts to generate evidence-based practices.
- Support a variety of research methods as appropriate to the topics and research questions.

Goal 3: Promote the effective use of knowledge in areas of importance to individuals with disabilities and their families.

- Increase and improve the capabilities and activities of NIDRR research centers and projects to ensure the accessibility and effective use of their research.
- Increase NIDRR's and NIDRR-funded centers' and projects' use of input from stakeholders.
- Establish priorities that inform systems and policy development as well as interventions to improve individual outcomes.
- Support topics of relevance that cut across disability categories and NIDRR's three domains.
- Maintain ongoing investments that effectively address topics of importance to individuals with disabilities and their families.

Goal 4: Improve program administration

- Streamline NIDRR's processes for establishing and publishing priorities for grant competitions.
- Establish and implement a consistent schedule of competitions and peer reviews so that competition announcements are predictable for potential applicants and peer reviewers.
- Improve NIDRR's peer review processes.

III. Background

NIDRR was established by the 1978 amendments to the Rehabilitation Act of 1973, as amended (the Act). As specified in section 200 of the Act (29 U.S.C. 760), NIDRR's purpose is to: (a) Provide for research, demonstration projects, training, and related activities to maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities of all ages, with particular emphasis on improving the effectiveness of services authorized under the Act; (b) provide for a comprehensive and coordinated approach to the support and conduct of research, demonstration projects, training, and related activities; (c) promote the transfer of rehabilitation technology to individuals with disabilities through research and demonstration projects; (d) ensure the widespread distribution, in usable formats, of practical scientific and technological information; (e) identify effective strategies that enhance the opportunities of individuals with disabilities to engage in employment, including employment involving telecommuting and self-employment; and (f) increase opportunities for researchers who are members of traditionally underserved populations, including researchers who are members of minority groups and researchers who are individuals with disabilities.

NIDRR is led by a Director within the Office of Special Education and Rehabilitative Services (OSERS) at the U.S. Department of Education. OSERS has two other components: The Rehabilitation Services Administration and the Office of Special Education Programs. NIDRR works closely with these offices as well as other disability-related offices and agencies across the Federal government.

NIDRR supports a wide range of rehabilitation research, development, and other activities designed to assist individuals with disabilities to achieve long-term outcomes such as independence, community participation, employment, and good health. To maximize its effectiveness in achieving such outcomes, NIDRR research and development activities focus on the complex interaction of personal, environmental, and supporting factors, including assistive technologies. In its practical and applied focus, NIDRR seeks to play a pivotal role in the relationship between the producers and consumers of knowledge.

The value of NIDRR's applied focus on research and development can be found in important advances in knowledge, practice, and public policies that have derived fully or partially from it. In recent years these have included, but have not been limited to the development of principles, standards, and applications of universal design; standards and applications to enhance accessibility of the World Wide Web and the design of accessibility features for information technology devices, such as computers and cell phones; widespread applications of technology to rehabilitation including telerehabilitation and national Internet-based workforce training systems; improved understanding and treatments of long-term consequences of spinal cord injury, burn injury, or traumatic brain injury; development of rehabilitation and community supports for individuals recovering from psychiatric conditions; understanding of the costs and outcomes of deinstitutionalization and the development of community supports for individuals with disabilities; better understanding of factors and practices contributing to the employment experience of individuals with disabilities; improvements in way finding and other mobility aides for individuals with cognitive or sensory conditions; and on-going analysis of national disability statistics to guide policy and practice. NIDRR is committed to maintaining its focus on practical applications of research, development, knowledge translation, capacity building, technical assistance, and information dissemination to improve the lives of individuals with disabilities and their families.

NIDRR currently employs nine mechanisms to make grant awards. Funding allocation within these mechanisms depends on the overall funding available to NIDRR, NIDRR's topical priorities for that year, and the size of the funding commitments for grants awarded in previous years. On average, about 25 percent of NIDRR's grants end each year. NIDRR's grant mechanisms include:

- Rehabilitation Research and Training Centers (RRTCs) conduct coordinated, advanced research to maximize health and function, promote maximum social and economic independence of individuals with disabilities, and improve rehabilitation methods or service delivery systems. RRTCs serve as national centers of excellence in research and as national resource centers.
- Rehabilitation Engineering Research Centers (RERCs) conduct programs of advanced engineering and technical research and development activities designed to create technological solutions for enhancing opportunities for individuals with disabilities, solving rehabilitation problems, and removing environmental barriers. RERCs provide for the cost-effective delivery and use of assistive technology devices.
- Disability and Rehabilitation Research Projects (DRRPs) emphasize a broad range of research and development projects, training, and knowledge translation on rehabilitation topics. DRRPs have ranged from

collecting longitudinal data on spinal cord, traumatic brain, and burn injuries to studying the effects of health care coordination.

- Americans with Disabilities Act (ADA) National Network Regional Centers provide information, technical assistance, and training in areas related to the mandates of the ADA. These centers constitute a national network and assist disability organizations, individuals with disabilities, businesses, public agencies, and the general public in understanding, complying with, and fulfilling the purposes of the ADA.
- Model Systems in Spinal Cord Injury, Traumatic Brain Injury, and Burn Injury support three networks of centers providing model rehabilitation services and supports to individuals after injury. The Model Systems carry out intramural programs of research as well as a collaborative program of longitudinal research and dissemination.
- Field-Initiated Projects address rehabilitation issues in promising and innovative ways. As the name implies, topics for these projects are chosen by the applicants.
- Advanced Rehabilitation Research Training Projects support institutions of higher education to recruit qualified post-doctoral individuals with clinical, management, or basic research experience and prepare them for careers in disability and rehabilitation research.
- Switzer Research Fellowships give individual researchers opportunities to develop new ideas, gain research experience, and concentrate on specific lines of research. NIDRR supports Switzer Fellows for one year as they conduct independent research projects.
- Small Business Innovation Research (SBIR) grants, administered by NIDRR as a part of the larger mandatory Federal SBIR program, support the production of new assistive and rehabilitation technologies. This two-phase program takes a rehabilitation-related product from development toward market readiness.

NIDRR funds are awarded competitively on the basis of advice received through a peer review process to ensure the quality and integrity of the NIDRR portfolio. Researchers, methodologists, rehabilitation engineers, and other experts, including individuals with disabilities, serve on panels made up of three to seven individuals. These experts review proposals according to the selection criteria in the application package for the competition. NIDRR's peer review process is designed to ensure the scientific quality of NIDRR's portfolio, its contributions to the well-being of individuals with disabilities, and its responsiveness to the needs of the disability and rehabilitation communities. NIDRR continues to focus on improving the quality of its peer review process, including addressing the specific recommendations for the peer review process made in the November 2011 review of NIDRR by the National Academy of Science (NAS) (National Academy of Sciences/National Research Council (2011). Review of disability and rehabilitation research: NIDRR grantmaking processes and products. Washington, DC: National Academies Press.)

IV. Proposed Goals and Objectives

NIDRR will pursue the following proposed goals and objectives for FY 2013 through FY 2017.

Proposed Goal 1: NIDRR will create a portfolio of research, development, and other activities that is balanced in terms of domains, populations of focus, and who, whether NIDRR or the grant applicant, defines the specific approach to a disability or rehabilitation research topic.

Proposed Objective 1.1—NIDRR Will Establish a Balanced Distribution of Priorities Focused on Improved Outcomes in the Domains of Employment, Community Living and Participation, and Health and Function

One of the congressional findings in section 2(a)(3) of the Act states that, ''disability is a natural part of the human experience and in no way diminishes the right of individuals to (A) live independently; (B) enjoy self-determination; (C) make choices; (D) contribute to society; (E) pursue meaningful careers; and (F) enjoy full inclusion and integration in the * * * mainstream of American society.'' An individual's opportunity to enjoy such rights depends on an interaction between the individual and the physical and social environment. Within each of its domains, NIDRR will support research, development, and other activities that gather and use knowledge of systems, environments, individuals, and behaviors to support the fulfillment of such rights.

Employment

Employment and earnings are essential to independence, self-determination, and contribution to society. NIDRR will support centers and projects to address unemployment, underemployment, and unnecessary dependency on public benefits. NIDRR will support activities to improve opportunities for employment that are consistent with an individual's abilities, interests, and career aspirations. NIDRR will also support research and development activities that examine employment policies and practices, vocational rehabilitation services, and technologies and accommodations that contribute to improved employment and career outcomes for individuals with disabilities.

Community Living and Participation

NIDRR is committed to improving the opportunities and abilities of individuals with disabilities to live as integrated members of their communities and to participate in community activities of their choice. NIDRR will fund activities consistent with the underlying principles of the independent living programs authorized under the Act and the ADA as affirmed in the U.S. Supreme Court's Olmstead decision of 1999, *Olmstead* v. *L.C.,* 527 U.S. 581 (1991). NIDRR will support centers and projects to increase community living and participation through improvements in policy, services and support delivery, assistive technologies, environmental modifications, and person-centered therapeutic interventions.

Health and Function

Maximizing health and function among people with disabilities is critical to achieving the goals of employment, community living and participation, and individual well-being across the lifespan. NIDRR will support centers and projects on health and function that improve understanding of the health status, health needs, and health care access of individuals with disabilities. These centers and projects will also develop and test interventions, including public policy interventions to improve health outcomes, increase or maintain functional abilities, and contribute to more effective medical rehabilitation and long-term services and supports, including integrated health and long-term service and support approaches.

Proposed Objective 1.2—NIDRR Will Establish a Balanced Distribution of Priorities To Address the Needs of Individuals With Different Disabilities, Personal Characteristics, and Social Circumstances

Rehabilitation Research and Training Centers—Centers of Excellence

NIDRR will establish RRTCs, as authorized in the Act, that will function as centers of excellence. In addition to being productive centers of relevant and well-designed research, these RRTCs

will: (1) Serve as national resource centers for individuals with disabilities and their representatives, families, service providers, policymakers, and others; (2) serve as informational and technical assistance resources to individuals with disabilities and their representatives, families, service providers, policymakers, and others through conferences, workshops, public education programs, in-service training programs, and similar activities; and (3) serve as centers of data gathering, analysis, and knowledge translation to address systems and policy issues that affect individuals with disabilities of all ages.

The RRTCs will serve as centers of excellence addressing the needs of individuals of all ages with psychiatric, intellectual and developmental, and physical disabilities, as well as individuals with significant impairments of vision and hearing. These centers will identify practices associated with positive outcomes across NIDRR's domains and assess the status and effectiveness of programs and service systems in achieving positive outcomes.

NIDRR will also establish RRTC centers of excellence in such areas as the following:

- Vocational rehabilitation.
- Rural rehabilitation.
- Rehabilitation of individuals from minority backgrounds.
- Families with members with disabilities.
- Disability statistics.

Rehabilitation Engineering and Research Centers

NIDRR will establish RERCs to address the barriers confronted by individuals with disabilities in all aspects of their lives. To the maximum extent appropriate to the area of engineering, the RERCs will address the needs of a wide range of individuals with disabilities, including those with sensory and cognitive impairments, regarding the barriers they confront in employment, community living and participation, and health and function.

NIDRR will establish RERCs that will address priorities within the following four areas of rehabilitation engineering:

- Rehabilitation strategies, techniques and interventions.
- Information and communication technologies.
- Individual mobility and manipulation.
- Physical access and transportation.

Proposed Objective 1.3—NIDRR Will Expand Field-Initiated Research and Development Opportunities To Support Innovation

In order to take advantage of the field's expertise, knowledge, and creativity, NIDRR plans to provide an increased number of field-initiated opportunities for research, demonstration, and developing technological solutions to significant problems faced by individuals with disabilities. After consulting with the proposed RRAC, publishing the proposed priorities for comment, and considering those comments, NIDRR will publish final priorities that include broad topical areas for which applicants will have the discretion to define a specific approach. Applicants also may propose cross-domain projects that have the potential to make a substantial contribution to solving significant problems.

Proposed Goal 2: NIDRR will support centers and projects that conduct well-designed research and development activities using a range of appropriate methods.

Proposed Objective 2.1—NIDRR Will Adopt a Stages-of-Research Framework That Will Enhance Its Efforts To Generate Evidence-Based Practices

NIDRR will support a range of well-designed research methods using a stages-of-research framework. When inviting applicants to apply appropriate research methods to important research questions, NIDRR will require applicants to identify the stage of research appropriate to their proposed research and will evaluate that proposed research using selection criteria appropriate to that stage. NIDRR's framework will include the following stages of research:

Exploration

Exploration has the research objective of generating new and refined analyses of data, observational findings, and other sources of information to guide hypotheses and theories. Exploration seeks to advance the state of knowledge regarding the status of individuals with disabilities and the barriers to and facilitators of improved employment, community living and participation, health and function, and other outcomes for individuals with disabilities. This research stage may include identifying or describing existing practices, programs, policies, or circumstances that are associated with important aspects of the lives of individuals with disabilities, the needs of people with disabilities, or outcomes of services and supports provided to them. Results achieved under this research objective may be used to inform new lines of research related to practices, programs, or policies to inform decisions or priorities.

Intervention Development

Intervention development has the research objective of generating and testing interventions that have the potential to improve outcomes for individuals with disabilities. Intervention development involves determining the features of possible interventions that are most significant in achieving desired outcomes, measures that would be required to illustrate outcomes, specification of target populations, field tests, and assessment of the feasibility of conducting a well-designed interventions study. Results from this research objective may be used to inform the design of a study to test the efficacy of an intervention.

Intervention Efficacy

Intervention efficacy has the research objective of evaluating and testing whether the interventions are feasible, are practical, and can yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of an intervention, identify factors or individuals characteristics associated with outcomes, and inform decisions about whether there is sufficient evidence to support ''scaling-up'' an intervention to other sites and contexts. Issues addressed may include training needed for wide scale implementation and approaches to evaluation of the intervention in real world applications.

Scale-Up Evaluation

Scale-up evaluation has the research objective of evaluating whether interventions are effective in producing improved outcomes for individuals with disabilities when implemented in real-world settings. This research tests the outcomes of evidence-based practices operating in different settings. It examines the challenges to successful replications and the circumstances and activities that contribute to successful wide-scale adoption of interventions, programs, policies, and technologies. Research in this area may also include well-designed studies of interventions that have been widely adopted in practice, but lack a sufficient evidence-base on its effectiveness.

Proposed Objective 2.2—NIDRR Will Support a Variety of Research Methods as Appropriate to the Topics and Research Questioned

NIDRR will support quantitative and qualitative research methodologies, as well as research approaches that combine both methodologies. NIDRR will provide guidance on its expectations for the various research methods.

Proposed Goal 3: NIDRR will promote the generation and effective use of knowledge in areas of importance to individuals with disabilities and their families.

Proposed Objective 3.1—NIDRR Will Increase and Improve the Capabilities of NIDRR Research Centers and Projects To Ensure the Accessibility and Effective Use of Their Research

NIDRR will increase expectations for its research centers and projects to provide research-based knowledge and resources to individuals with disabilities and their families, service providers, and policymakers. NIDRR will support training, technical assistance, and knowledge translation activities to enhance the capabilities of individuals with disabilities, researchers, practitioners, and organizations and agencies to use the best available information in order to obtain desired outcomes for individuals with disabilities.

All of NIDRR's centers and projects will carry out knowledge translation activities. Knowledge translation promotes the use of research-based knowledge to support the ability of individuals to live successfully in society. Key components of knowledge translation are: requiring that grantees involve relevant stakeholders in the design and conduct of research activities to optimize the relevance and use of proposed outputs; using tools like systematic reviews and research synthesis to assess and disseminate the information generated through research; and translating research findings into information that is usable by individuals with disabilities and their families, practitioners, and policymakers.

Proposed Objective 3.2—NIDRR and NIDRR-Funded Centers and Projects Will Increase Their Use of Input From Stakeholders

In order to ensure that its centers and projects address important issues affecting individuals with disabilities and their families, NIDRR will develop and implement a process that continuously communicates with a wide range of stakeholders to share information about NIDRR's activities, solicit feedback on the impact of NIDRR's investments, obtain recommendations for research topics, and gather stakeholder input on NIDRR's long-range plans.

Rehabilitation Research Advisory Council

As authorized by section 205 of the Act and consistent with a recommendation in the 2012 National Academy of Sciences (NAS) review report, NIDRR proposes to establish the RRAC. The RRAC will advise NIDRR's Director about research priorities and the development and revision of its current and future Long range Plans.

Improved Use of Information Technology

NIDRR will continue to upgrade its use of information technology, including its Web site, in order to improve its information dissemination activities, increase its capacity to obtain input and feedback from stakeholders, and facilitate on-going discussions with and among NIDRR grantees, individuals with disabilities, and other stakeholders.

Proposed Objective 3.3—NIDRR Will Establish Priorities That Inform Systems and Policy Development as Well as Interventions To Improve Outcomes for Individuals

Across its three domains, NIDRR will support centers and projects that address systems and policy issues as well as interventions that directly improve outcomes for individuals with disabilities and their families. Across its employment, community living and participation, and health and functioning domains, NIDRR will support centers and projects that measure systems and policy effects, as well as the effects of interventions to directly improve outcomes for individuals with disabilities and their families.

Proposed Objective 3.4—NIDRR Will Support Topics of Relevance That Cut Across Disability Categories and NIDRR's Three Domains

NIDRR will support important projects that cut across disability categories or outcome domains when such projects are relevant, well-designed, and offer promise of significant benefit to multiple groups of individuals with disabilities and their families. Examples of these cross-cutting priorities will include, but may not be limited to, disability demographics and technology for access and function.

Disability Demographics

Valid and reliable demographic data help all agencies and research in the disability field. NIDRR will continue its work with other Federal agencies to meet its statutory mandate to collaborate in producing demographic and statistical data that describe the population of individuals with disabilities. NIDRR's disability demographics effort will generate and disseminate new and current information that can be used by individuals with disabilities, service providers, policymakers, and others working to identify and eliminate disparities in employment, community living and participation, and health and function.

Technology for Access and Function

For individuals with disabilities, technology plays a vital role by improving function and increasing access, thereby enhancing the ability to lead increasingly independent, secure, and productive lives. At the individual level, NIDRR will focus on assistive technology devices that enhance the physical, sensory, and cognitive abilities. At the systems level, NIDRR will emphasize applying technology research and development in ways that enhance community integration, independence, productivity, competitiveness, and equal opportunity by mitigating or eliminating barriers found in large social systems such as public transportation, telecommunications, information technology, and the built environment.

NIDRR will continue to support technology-related centers and projects to conduct research and development, with the end goal of transferring technology into commercialized or non-commercialized products that can be readily accessed and used to improve the lives of individuals with disabilities. NIDRR will continue to play a leadership role within the Federal government on accessibility of information and computer technologies.

Leadership in Cloud Computing

NIDRR is committed to ensuring access to and benefit from cloud computing for individuals with disabilities. It recognizes the existence of substantial international activity in this area, from which the individuals stand to benefit and to which the United States should contribute. NIDRR and its grantees will play leadership roles in national and international activities to ensure accessibility, and to exploit the potential of cloud computing to support the independence, employment, and

functional capabilities of persons with disabilities. In its efforts NIDRR will support grantees working on cloud-based infrastructure and applications, and will work cooperatively across government agencies and with private entities to leverage the resources available for this important work.

Proposed Objective 3.5—NIDRR Will Maintain On-Going Investments That Effectively Address Topics of Importance To Individuals With Disabilities and Their Families

NIDRR has invested in a number of projects for many years. The value of these long-term investments is an important consideration as NIDRR plans for its future commitments. For example, NIDRR has supported projects that have created national rehabilitation and disability services databases, supported accessibility of the built environment and information technologies, as well as other nationally valued projects in other areas. On a project-by-project basis and with the input of the RRAC and other stakeholders, NIDRR will continue to support centers and projects in certain priority areas in which NIDRR has substantial long-term investments and that continue to contribute significantly to NIDRR's goals and objectives.

Proposed Goal 4: NIDRR will improve program administration.

Proposed Objective 4.1—NIDRR Will Streamline Processes for Establishing and Publishing Priorities for Grant Competitions

Historically, most of NIDRR's priorities have included a number of detailed required activities that demanded a great deal of time to develop and publish. As indicated in Objective 1.3 of the Plan, NIDRR will provide applicants with more field-initiated opportunities by issuing priorities for each domain that consist of broad topical areas and fewer specifically required activities. These topical areas will remain open for competition for up to five years. This will provide applicants with increased discretion to propose specific projects that fall within the topical areas and enhance NIDRR's ability to publish its funding priorities on a more-timely basis. In addition, because NIDRR staff will devote less time developing and publishing new priorities, they will have more time for providing technical assistance to their grantees, monitoring grants, and participating in cross-agency research and development activities.

Proposed Objective 4.2—NIDRR Will Establish and Implement a Regular Schedule of Competitions and Peer Reviews

The NAS review report noted that NIDRR has not established a regular schedule for publishing priorities, publishing notices inviting applications, or conducting peer review. An irregular schedule may negatively affect the ability of qualified applicants to submit proposals and limit the availability of expert reviewers. Consistent with the NAS recommendations, and aided by streamlining its priority development process, NIDRR will establish a regular schedule of competitions that potential applicants and peer reviewers can depend on for planning purposes. Having the topical areas in place for up to five years will provide the field with stable and reliable opportunities for funding, and applicants who are not successful in one competition can revise and improve their applications for future competitions under the same topic.

Proposed Objective 4.3—NIDRR Will Improve Its Peer Review Process

The NAS review report commented on NIDRR's peer review processes and made a number of recommendations for enhancement. Consistent with the NAS recommendations and ongoing quality improvement goals within NIDRR, during the next five years NIDRR will improve the following:

- Recruitment of qualified reviewers.
- Peer reviewer orientation.
- Review criteria and scoring.
- Stakeholder representation and support for these stakeholders to participate on review panels.
- Consistency across review panels.

A number of other changes will be explored by NIDRR as potential means of enhancing the ability of peer reviewers to carry out their responsibilities. These include, but are not limited to: (1) Establishing page limits for some or all NIDRR program applications; and (2) limiting the number of applications reviewed per panel with limits depending on the page limits of the applications.

V. Summary

With the adoption of this Plan, as refined by comments and suggestions from stakeholders and other parties, NIDRR believes it will be positioned to better reflect the principles of balance, quality, and relevance in its activities. This approach will make NIDRR more effective in fulfilling its role as a leading Federal agency in generating and promoting the use of knowledge to improve the lives of individuals with disabilities and their families.

[FR Doc. 2012–9365 Filed 4–17–12; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to Sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, as amended by Section 622 of the Consolidated Appropriations Act, 2012, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** this notice in reference to the changes made to the HAVA State plan previously submitted by Virginia. The revised State plan will be posted on the EAC Web site.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA Section 254(a)(11) through (13). HAVA Sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the third revision to the State plan for Virginia.

The amendments to Virginia's State plan provide for compliance with Title III and with the Military and Overseas Voter Empowerment Act (MOVE Act). In accordance with HAVA Section 254(a)(12), all the State plans submitted for publication provide information on how the respective State succeeded in carrying out its previous State plan. Virginia confirms that its amendments to the State plan were developed and submitted to public comment in

accordance with HAVA Sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from April 18, 2012, the State is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA Section 254(a)(11)(C). EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Official

Mr. Donald Palmer, Secretary, State Board of Elections, Washington Building, First Floor, 1100 Bank Street, Richmond, Virginia 23219, Phone: (804) 864–8901 or 1(800) 552–9745, Fax: (804) 371–0194.

Thank you for your interest in improving the voting process in America.

Dated: April 3, 2012.

Mark A. Robbins,

General Counsel & Acting Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2012–9280 Filed 4–17–12; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–326–A]

Application To Export Electric Energy; Citigroup Energy Canada ULC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Citigroup Energy Canada ULC (CECU) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or motions to intervene must be submitted on or before May 18, 2012.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov*, or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by email to *Christopher.Lawrence@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On May 17, 2007, the Department of Energy (DOE) issued Order No. EA–326 authorizing CECU to transmit electric energy from the United States to Canada as a power marketer for a five-year term. The current export authority in Order No. EA–326 will expire on May 17, 2012. On April 3, 2012, CECU filed an application with DOE for renewal of that authority for an additional ten-year term.

In its application, CECU states that it ''does not currently own or control electric generation or transmission facilities in any wholesale market in interstate commerce or have a power supply system of its own on which its exports of electricity could have a reliability, fuel use, or system stability impact.'' CECU states that the electric power proposed to be exported to Canada will be purchased from electric utilities and federal power marketing agencies pursuant to voluntary agreements and will be surplus to the system needs of the entities selling the power to CECU. The application also indicates that CECU is a power marketer authorized by the Federal Energy Regulatory Commission (FERC) to sell energy, capacity, and specified ancillary services at market-based rates.

The existing international transmission facilities to be utilized by CECU have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the FERC Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the CECU application to export electric energy to Canada should be clearly marked with OE Docket No. 326–A. An additional copy is to be filed directly with Victoria Sharp, Citigroup Energy Inc., 2800 Post Oak Boulevard, Suite 500, Houston, TX 77056 and with Vincenzo Franco, Esq., Van Ness Feldman, P.C., 1050 Thomas Jefferson St. NW., Seventh Floor, Washington, DC 20007. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov*.

Issued in Washington, DC, on April 12, 2012.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2012–9319 Filed 4–17–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Guidelines for Home Energy Professionals: Standard Work Specifications for Single Family Energy Upgrades

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of reopening of comment period.

SUMMARY: A notice of availability and request for comments on a revised version of *The Guidelines for Home Energy Professionals: Standard Work Specifications for Single Family Energy Upgrades* was published in the **Federal Register** on March 29, 2012. 77 FR 19008. A number of commenters indicated that because of the extent of changes to the revised version from the version previously made publically available, additional time should be provided for review and comment. This notice reopens the comment period on the revised guidelines to provide additional opportunity for public review and comment.

DATES: Comments on the *Guidelines for Home Energy Professionals: Standard Work Specifications for Single Family Energy Upgrades* must be received by 5

p.m. Eastern Standard Time on May 15, 2012.

ADDRESSES: A link to the online public comment tool can be found at: *http://nrel.pnnl.gov/forumdisplay.php/5-SWS-for-Single-Family-Homes*

You may also submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *By email: retrofit.guidelines@nrel.gov.*
- *By mail:* National Renewable Energy Laboratory, Attn: Chuck Kurnik, RSF402, 1617 Cole Boulevard, Golden, CO 80401.

For further information on how to submit comments, please see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Joshua Olsen, Weatherization and Intergovernmental Program, Mailstop EE–2K, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Phone number: (202) 287–1813, Email: *joshua.olsen@ee.doe.gov.*

Christopher Calamita, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue SW., Washington, DC 20585, Phone number: (202) 586–1777, Email: *christopher.calamita@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: EERE through the National Renewable Energy Laboratory is developing voluntary work specifications for the work involved in home energy upgrades. This document builds upon the considerable body of material already in circulation and the cumulative knowledge gathered throughout the 30-year history of the Weatherization Assistance Program and broader home performance industry.

The development of *The Guidelines for Home Energy Professionals: Standard Work Specifications for Single Family Energy Upgrades (SWS)* is supported by the Weatherization Assistance Program (WAP) Training and Technical Assistance Plan (T&TA). The process of developing the *SWS* has involved a historic collaboration between WAP practitioners and trainers, home performance contractors, building scientists, organized labor, healthy homes and worker safety experts, and other professionals in the building trades and throughout the retrofit industry. On November 9, 2010, EERE issued a notice requesting public comment on a draft version of the *SWS.* On March 29, 2012, EERE made available a version of the *SWS* that was revised in response to comments received, and provided an opportunity for public review and comment until April 11, 2012. 77 FR 19008. For background on the revised version of the *SWS,* see the March 29, 2012 notice.

Comments provided to date can be viewed at: *http://nrel.pnnl.gov/forumdisplay.php/9-SWS-for-Single-Family-Homes.*

The comment docket now identifies the commenter along with the comment provided.

A number of commenters indicated that because of the extent of changes to the revised *SWS* as compared to the version previously made publically available, additional time should be provided for review and comment. This notice reopens the comment period on the revised guidelines to provide additional opportunity for public review and comment.

Submission of Comments

DOE will accept comments, data, and information regarding the proposed guidelines no later than the date specified under the **DATES** heading. Comments received during the period following April 11, 2012, and the date of this notice will be treated as having been timely submitted.

If submitting comments via the DOE Web page, please follow all instructions on the Web page: *http://www.weatherization.energy.gov/retrofit_guidelines.* This Web site is specifically designed for ease of use to facilitate the public comment process.

Comments, data, and information uploaded to *regulations.gov,* or submitted via DOE's email address or regular mail should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments, data, and information submitted to DOE via regular mail may include one signed paper original.

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: One copy of the document including all the information believed to be confidential, and one copy of the document that does not include the information believed to be confidential. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include:

(1) A description of the items;

(2) Whether and why such items are customarily treated as confidential within the industry;

(3) Whether the information is generally known by or available from other sources;

(4) Whether the information has previously been made available to others without obligation concerning its confidentiality;

(5) An explanation of the competitive injury to the submitting person which would result from public disclosure;

(6) A date upon which such information might lose its confidential nature due to the passage of time; and

(7) Why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on April 11, 2012.

AnnaMaria Garcia,

Acting Program Manager, Weatherization and Intergovernmental Program, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–9311 Filed 4–17–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13680–001]

Bryant Mountain, LLC; Notice of Additional Scoping Meetings, Extension of Time To File Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. Due to a clerical error, our notice for scoping meetings on the proposed Bryant Mountain Pumped Storage Hydroelectric Project held March 13 and 14, 2012, in Malin and Klamath Falls, Oregon was not published in the local newspaper. Therefore, Commission staff will hold two additional scoping meetings in Malin, Oregon. Additionally, this notice extends the deadline for the filing of comments on the Pre-Application Document (PAD) and Scoping Document 1 (SD1).

b. *Type of Filing:* Notice of Intent to File License Application for an Original License and Commencing Pre-filing Process.

c. *Project No.:* 13680–001.

d. *Dated Filed:* December 21, 2011.

e. *Submitted By:* Bryant Mountain, LLC.

f. *Name of Project:* Bryant Mountain Pumped Storage Hydroelectric Project.

g. *Location:* Near Malin in Klamath County, Oregon, on lands administered by the U.S. Bureau of Land Management and private lands.

h. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

i. *Potential Applicant Contact:* Mr. Bart O'Keeffe, Bryant Mountain, LLC, P.O. Box 1916, Discovery Bay, California 94505, (925) 634–1550 or email at *bmokeeffe@sbcglobal.net*.

j. *FERC Contact:* Ryan Hansen at (202) 502–8074 or email at *ryan.hansen@ferc.gov*.

k. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item m below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

l. Bryant Mountain, LLC, filed with the Commission a PAD (including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are extending the period in which we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests to ensure that all stakeholders have been notified. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph i. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission. Documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All filings with the Commission must include on the first page, the project name (Bryant Mountain Pumped Storage Hydroelectric Project) and the project number (P–13680–001), and bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by June 11, 2012.

o. We intend to prepare an Environmental Impact Statement (EIS) for this project. The scoping meetings identified below satisfy the NEPA scoping requirements.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date and Time: Tuesday, May 8, 2012, 9 a.m.–12 p.m.

Location: Malin City Park Hall, 2432 Fourth Street, Malin, OR 97632.

Phone Number: (541) 723–2021.

Evening Scoping Meeting

Date and Time: Tuesday, May 8, 2012, 6 p.m.–9 p.m.

Location: Malin City Park Hall, 2432 Fourth Street, Malin, OR 97632.

Phone Number: (541) 723–2021.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's and the applicant's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov*, using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Meeting Objectives

At the scoping meetings, staff will: (1) Discuss a preliminary list of issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item m. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: April 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9272 Filed 4–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13625–001]

Lock+ Hydro Friends Fund XXX, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13625–001.

c. *Date Filed:* February 20, 2012.

d. *Submitted By:* Lock+ Hydro Friends Fund XXX, LLC.

e. *Name of Project:* New Cumberland Locks and Dam Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corp Of Engineer's New Cumberland Locks and Dam on the Ohio River at the border of Hancock County, West Virginia, and Jefferson County, Ohio. The project would occupy United States lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Mark R. Stover, Lock+™ Hydro Friends Fund XXX, c/o Hydro Green Energy, LLC, 900 Oakmont Lane, Suite 310, Westmont, IL 60559; (877) 556–6566 ext. 711; email—*mark@hgenergy.com.*

i. *FERC Contact:* Gaylord Hoisington at (202) 502–6032 or email at *gaylord.hoisington@ferc.gov.*

j. Lock+ Hydro Friends Fund XXX, LLC filed its request to use the Traditional Licensing Process on February 20, 2012. Lock+ Hydro Friends Fund XXX, LLC provided public notice of its request on February 22, 2012. In a letter dated April 10, 2012, the Director of the Division of Hydropower Licensing approved Lock+ Hydro Friends Fund XXX, LLC's request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the West Virginia and Ohio State Historic Preservation Officers, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Lock+ Hydro Friends Fund XXX, LLC as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, and section 106 of the National Historic Preservation Act.

m. Lock+ Hydro Friends Fund XXX, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: April 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9278 Filed 4–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–100–000]

Floridian Natural Gas Storage Company, LLC; Notice of Application

Take notice that on March 30, 2012, Floridian Natural Gas Storage Company, LLC (FGS), 1000 Louisiana Street, Suite 4361, Houston, Texas 77002, filed in the above referenced docket an application pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations to amend the certificate of public convenience and necessity authorized in Docket No. CP08–13–000. Specifically, FGS seeks authorization to, in the normal course of business, redeliver liquefied natural gas to transporting vehicles provided by its customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Joan Darby, Dickstein Shapiro LLP, 1825 Eye Street NW., Washington, DC 20006, by telephone at (202) 420–2200 or by email at *darbyj@dicksteinshaprio.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process.

Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 2, 2012.

Dated: April 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9277 Filed 4–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14329–000]

Grand Coulee Project Hydroelectric Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 1, 2011, the Grand Coulee Project Hydroelectric Authority filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Banks Lake Pumped Storage Project (Banks Lake Project or project) to be located on Banks Lake and Franklin D. Roosevelt Lake (Roosevelt Lake), near the town of Grand Coulee, Douglas and Grant Counties, Washington. The project would be located on federal lands administered by the U.S. Bureau of Reclamation (Reclamation) and the U.S. Bureau of Land Management (BLM). The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project has two alternatives:

Alternative 1

The proposed project would use Reclamation's existing Banks Lake as the upper reservoir and Roosevelt Lake as the lower reservoir. The proposed project would consist of the following new facilities: (1) An upper reservoir inlet/outlet structure equipped with trash racks; (2) a 1.5-mile-long penstock consisting of a vertical shaft, power tunnel segments, and a tailrace section, extending between the upper reservoir inlet/outlet and the reversible turbine/generator units in the powerhouse; (3) an underground powerhouse containing four reversible turbine/generator units rated for 250 megawatts (MW) each, for a total installed generation of 1,000 MW, or a powerhouse located on the shore of Roosevelt Lake, also containing four 250–MW reversible turbine/generator units; (4) a 2-mile-long, 500-kilovolt (kV) transmission line extending from the project powerhouse to an existing 500-kV substation; and (5) appurtenant facilities. The estimated annual generation of Alternative 1 for the Banks Lake Project would be 2,263 gigawatt-hours (GWh).

Alternative 2

The proposed project would use Reclamation's existing Banks Lake as the lower reservoir. The proposed project would consist of the following new facilities: (1) A new 312-acre upper reservoir constructed approximately 3,000 feet west of the existing Banks Lake, impounded by three earth and rockfill embankments, each with a crest elevation of 2,300 feet above mean sea level; (2) an upper reservoir inlet/outlet structure equipped with trash racks; (3) a 620-foot-long, 43-foot-diameter vertical shaft connecting the upper reservoir inlet/outlet structure to the power tunnels; (4) four 1,700-foot-long, 17-foot-diameter power tunnels leading from the vertical shaft to the powerhouse; (5) an underground powerhouse containing four reversible turbine/generator units rated for 260 MW each, for a total installed generation of 1,040 MW; (6) a 25-foot-diameter tailrace tunnel between the powerhouse and the existing Banks Lake; (7) a 2.4-mile-long, 500-kV transmission line extending from the project powerhouse to a new 500-kV substation; and (8) appurtenant facilities. The estimated annual generation of Alternative 2 for the Banks Lake Project would be 2,978 GWh.

Applicant Contact: Mr. Ronald K. Rodewald, Secretary-Manager, Grand Coulee Project Hydroelectric Authority, P.O. Box 219, Ephrata, WA 98823; phone: (509) 754–2227.

FERC Contact: Jennifer Harper; phone: (202) 502–6136.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14329) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9273 Filed 4–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14372–000]

Grand Coulee Project Hydroelectric Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 13, 2012, Grand Coulee Project Hydroelectric Authority filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Rocky Coulee Wasteway Hydroelectric Project (project) to be located on the Rocky Coulee Wasteway near Moses Lake in Grant County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of two developments, the Upper Chute and the Lower Chute.

Upper Chute Development

The Upper Chute development is below the headworks of the wasteway and would consist of the following: (1) A concrete intake diversion canal leading to an intake gate structure; (2) a 10-foot-diameter steel penstock extending approximately 1,450 feet from the intake structure to a powerhouse; (3) a powerhouse with one generating unit rated at 5.2 megawatts (MW) at 80 feet of average head, discharging directly back to the wasteway; (4) a 13-kilovolt (kV), 2,000-foot-long transmission line extending from the powerhouse to a transmission line owned by the Public Utility District of Grant County (Grant PUD) (the point of interconnection); and (5) appurtenant facilities.

Lower Chute Development

The Lower Chute development is at mile 3.8 of the wasteway and would consist of the following: (1) A concrete intake diversion canal leading to an intake gate structure; (2) a 10-foot-diameter steel penstock extending approximately 750 feet from the intake structure to a powerhouse; (3) a powerhouse with one generating unit rated at 6.8 MW at 105 feet of average head, discharging directly back to the wasteway; (4) a 13.8-kV, 800-foot-long transmission line extending from the powerhouse to a transmission line owned by Grant PUD (the point of interconnection); and (5) appurtenant facilities. The estimated annual generation of both developments would be 16,900 megawatt-hours.

Applicant Contact: Mr. Ronald K. Rodewald, Secretary-Manager, Grand Coulee Project Hydroelectric Authority, PO Box 219, Ephrata, Washington 98823; phone: (509) 754–2227.

FERC Contact: Kim Nguyen; phone: (202) 502–6105.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14372) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9274 Filed 4–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–97–000]

CenterPoint Energy Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on March 28, 2012, CenterPoint Energy Gas Transmission Company, LLC (CEGT), 1111 Louisiana Street, Houston, Texas filed a prior notice application pursuant to sections 157.205 and 157.216(b)(2) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA), and CEGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, for authorization to abandon in place approximately 15.95 miles of Line E, a low-pressure delivery lateral located in Nevada and Ouachita Counties, Arkansas, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Michelle Willis, Manager Regulatory & Compliance, CenterPoint Energy Gas Transmission Company, LLC, P.O. Box 21743, Shreveport, Louisiana 71151, or call (318) 429–3708, or fax (318) 429–3133 or email *Michelle.Willis@CenterPointEnergy.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and

two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: April 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9276 Filed 4–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–22–000]

Atmos Energy Colorado/Kansas Division; Notice of Revised Baseline Filing

Take notice that on April 10, 2012, Atmos Energy Colorado/Kansas Division (Atmos) filed a revised baseline filing of their Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA) to comply with a Delegated Letter Order issued March 29, 2012, in Docket No. CP12–53–000 (138 FERC ¶ 62,319).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, April 23, 2012.

Dated: April 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9271 Filed 4–17–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0249; FRL–9515–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Other Solid Waste Incineration Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 18, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0249, to: (1) EPA online using www.regulations.gov (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0249, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index

listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Other Solid Waste Incineration Units (Renewal).

ICR Numbers: EPA ICR Number 2163.04, OMB Control Number 2060–0563.

ICR Status: This ICR is scheduled to expire on May 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and 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.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart EEEE.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart EEEE, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

In order to ensure compliance with these standards, adequate reporting and recordkeeping are necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are list in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average zero hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and 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. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of other solid waste incineration units.

Estimated Number of Respondents: 0.

Frequency of Response: Initially, annually and semiannually.

Estimated Total Annual Hour Burden: 0.

Estimated Total Annual Cost: $0.

Changes in the Estimates: There are no changes in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. At present, there are no OSWI units subject to the regulations, and no new units are expected to be constructed or operated over the next three years. It is assumed that potential respondents would use alternative methods of waste disposal that are more economical, e.g. landfills, rather than replacing existing OSWI units. As a result, no respondent or agency burdens or costs have been estimated, and no annual is burden expected.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9297 Filed 4–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0270; FRL–9344–8]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, EPA gives notice that a public meeting of the Pesticide Program Dialogue Committee (PPDC) is scheduled for May 3–4, 2012. A draft agenda is under development and will be posted by April 16, 2012. Four PPDC Workgroup meetings are also scheduled for May 2, 2012: Integrated Pest Management, Comparative Safety Statements, Public Health, and Pollinator Protection. The PPDC 21st Century Toxicology Workgroup is scheduled to meet on May 3, 2012. All meetings are free, open to the public, and no advance registration is required.

DATES: The PPDC meeting will be held on Thursday, May 3, 2012, from 9 a.m. to 5 p.m., and Friday, May 4, 2012, from 9 a.m. to noon. On Wednesday, May 2, 2012, PPDC Workgroup meeting schedules are as follows: Integrated Pest Management from 9 a.m. to 12:30 p.m.; Comparative Safety Statements from 1 p.m. to 4 p.m.; Public Health from 1 p.m. to 4 p.m.; and Pollinator Protection from 1 p.m. to 4 p.m. On Thursday, May 3, 2012, the PPDC 21st Century Toxicology Work group will meet from 11 a.m. to 2 p.m. Information regarding PPDC Workgroups is available on EPA's Web site at *http://www.epa.gov/pesticides/ppdc/.*

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, give EPA as much time as possible to process your request.

ADDRESSES: The PPDC and Workgroup meetings will be held at EPA's location at 1 Potomac Yard South, 2777 South Crystal Drive, Arlington, VA. The PPDC meeting will be held in the lobby-level Conference Center, as will the Integrated Pest Management and Pollinator Protection Workgroup meetings. The Comparative Safety Statements

Workgroup meeting will be held in room South 4370. The Public Health Workgroup meeting will be held in room North 4830. The 21st Century Toxicology Workgroup meeting will be held in room North 4830. EPA's Potomac Yard South building is approximately one mile from the Crystal City Metro Station.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–4775; fax number: (703) 308–4776; email address: *fehrenbach.margie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); the amendments to FIFRA and FFDCA by the Food Quality Protection Act (FQPA) of 1996; the Pesticide Registration Improvement Act; and the Endangered Species Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; animal welfare organizations; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2012–0270. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

A draft agenda is being developed and will be posted by April 16, 2012, on EPA's Web site at: *http://www.epa.gov/pesticides/ppdc/*.

II. Background

EPA's Office of Pesticide Programs (OPP) is entrusted with the responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Charter for EPA's Pesticide Program Dialogue Committee (PPDC) was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995, and has been renewed every 2 years since that time. The purpose of PPDC is to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. It is determined that PPDC is in the public interest in connection with the performance of duties imposed on the Agency by law. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest, consumer, and animal rights groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. How can I request to participate in this meeting?

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting. Comments may be made during the public comment session of each meeting or in writing to the address listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Endangered species, Foods, Integrated Pest Management, Pesticide labels, Pesticides and pests, Pollinator protection, Public health, 21st Century toxicology.

Dated: April 5, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2012–8926 Filed 4–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OW–2011–0555; FRL–9660–8]

Public Water System Supervision Program Revision for the Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the Commonwealth of Kentucky is revising its approved Public Water System Supervision Program. Kentucky has adopted the following rules: Public Notification Rule, Arsenic Rule, Radionuclides Rule, Long-Term 2 Enhanced Surface Water Treatment Rule, Lead and Copper Rule Short-Term Revisions, Stage 1 Disinfectants and Disinfection Byproduct Rule and the Stage 2 Disinfectants and Disinfection Byproduct Rule. The EPA has determined that Kentucky's rules are no less stringent than the corresponding federal regulations. Therefore, the EPA is tentatively approving this revision to the Commonwealth of Kentucky's Public Water System Supervision Program.

DATES: Any interested person may request a public hearing. A request for a public hearing must be submitted by May 18, 2012, to the Regional Administrator at the EPA, Region 4 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by May 18, 2012, a public hearing will be held. If the EPA, Region 4 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on May 18, 2012. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such

hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Kentucky Department for Environmental Protection, Division of Water, 200 Fair Oaks Lane, Fourth Floor, Frankfort, Kentucky 40601; and the U.S. Environmental Protection Agency, Region 4, Safe Drinking Water Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Brian Smith, EPA Region 4, Safe Drinking Water Branch, at the address given above, by telephone at (404) 562–9845, or at *smith.brian@epa.gov.*

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142.

Dated: January 9, 2012.

Stan Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–9327 Filed 4–17–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to support the export of approximately $112 million in U.S. rail hardening and straightening equipment and services to Russia. The financed amount associated with the U.S. export contract is expected to total approximately $88 million. The project will result in an increase in Russian rail production by 200,000 metric tons per year. Available information indicates that the Russian production is for domestic consumption only. Interested parties may submit comments on this transaction by email to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue NW., Room 947, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register.**

Angela Mariana Freyre,

Senior Vice President and General Counsel.

[FR Doc. 2012–9313 Filed 4–17–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 12–409]

Notice of Debarment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') debars Mr. Dennis L. Bruno from the schools and libraries universal service support mechanism (or ''E-Rate Program'') for a period of three years. The Bureau takes this action to protect the E-Rate Program from waste, fraud and abuse.

DATES: Debarment commences on the date Mr. Dennis L. Bruno receives the debarment letter May 18, 2012, whichever date comes first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Joy M. Ragsdale, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A236, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by phone at (202) 418–1697 or by email at *Joy.Ragsdale@fcc.gov*. If Ms. Ragsdale is unavailable, you may contact Ms. Theresa Cavanaugh, Acting Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by email at *Theresa.Cavanaugh@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Bureau debarred Mr. Dennis L. Bruno from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.8. Attached is the debarment letter, DA 12–409, which was mailed to Mr. Dennis L. Bruno and released on March 15, 2012. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via email *http://www.bcpiweb.com*.

Federal Communications Commission.

Theresa Z. Cavanaugh,

Acting Chief, Investigations and Hearings Division, Enforcement Bureau.

March 15, 2012

DA 12–409

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED AND E-MAIL

Dr. Dennis L. Bruno,

c/o Mr. Arthur T. McQuillan, McQuillan Law Offices, 206 Main Street, Johnstown, PA 15901.

Re: Notice of Debarment, File No. EB–11–IH–1582

Dear Dr. Bruno:

The Federal Communications Commission (Commission) hereby notifies you that, pursuant to Section 54.8 of its rules, you are prohibited from participating in the schools and libraries universal service support mechanism (E-Rate program) for three years from either the date of your receipt of this Notice of Debarment, or of its publication in the **Federal Register**, whichever is earlier in time (Debarment Date).[1]

On November 18, 2011, the Commission's Enforcement Bureau (Bureau) sent you a Notice of Suspension and Initiation of Debarment Proceeding (Notice of Suspension)[2] that was published in the **Federal Register** on November 30, 2011.[3] The Notice of Suspension suspended you from participating in activities associated with or relating to the E-Rate program and described the basis for initiating debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.

As discussed in the Notice of Suspension, on May 9, 2011, you pled guilty to intentionally misappropriating approximately $49,600 in federal education funds from the Department of Education's Fund for the Improvement of Education program in your capacity as Superintendent of the Glendale School District.[4] Additionally, you admitted and stipulated in a plea agreement that you had conspired with others to fraudulently obtain $414,421.92 from the E-Rate program.[5] Pursuant to Section 54.8(c) of the Commission's rules, your conviction of criminal conduct in connection with the E-Rate program is the basis for your debarment.[6]

[1] 47 CFR 54.8(g). See also 47 CFR 0.111 (delegating authority to the Enforcement Bureau to resolve universal service suspension and debarment proceedings).

[2] Letter from Theresa Z. Cavanaugh, Acting Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Dr. Dennis L. Bruno, Notice of Suspension and Initiation of Debarment Proceeding, 26 FCC Rcd 16006 (Enf. Bur. 2011) (Attachment 1).

[3] 76 FR 74058 (Nov. 30, 2011).

[4] *United States* v. *Dennis L. Bruno,* Criminal Docket No. 11–15 J, Arraignment Plea; United States Attorney's Office, Western District of Pennsylvania, News, Former Superintendent Pleads Guilty to Federal Program Theft, May 9, 2011, at *http://www.justice.gov/usao/paw/news/2011/2011_may/2011_05_09_05.html* (Press Release).

[5] Press Release at 1.

[6] 47 CFR 54.8(c).

In accordance with the Commission's debarment rules, you were required to file with the Commission any opposition to your suspension or its scope, or to your proposed debarment or its scope, no later than 30 calendar days from either the date of your receipt of the Notice of Suspension or of its publication in the **Federal Register**, whichever date occurred first.[7] The Commission did not receive any such opposition.

For the foregoing reasons, you are debarred from participating in the E-Rate program for three years from the Debarment Date.[8] During this debarment period, you are excluded from participating in any activities associated with or related to the E-Rate program, including the receipt of funds or discounted services through the E-Rate program, or consulting with, assisting, or advising applicants or service providers regarding the E-Rate program.[9]

SINCERELY,

THERESA Z. CAVANAUGH,

Acting Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Johnnay Schrieber, Universal Service Administrative Company (via email)
Rashann Duvall, Universal Service Administrative Company (via email)
Stephanie L. Haines, United States Attorney's Office, Western Pennsylvania (via email)

[FR Doc. 2012–9399 Filed 4–17–12; 8:45 am]

BILLING CODE 6712–01–P

[7] 47 CFR 54.8 (e)(3), (4). Any opposition had to be filed no later than December 30, 2011.

[8] Id. 54.8(e)(5), (g).

[9] Id. 54.8(a)(1), (5), (d).

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2 p.m. on Monday, April 23, 2012, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final Rule Regarding Calculating the Maximum Obligation the FDIC May Incur in Liquidating a Covered Financial Company.

Memorandum and resolution re: Final Rule under Dodd-Frank Section 203(e) Providing for the Treatment of a Mutual Insurance Holding Company as an Insurance Company.

Personnel Matters.

Discussion Agenda:

Memorandum and resolution re: Update of Projected Deposit Insurance Fund Losses, Income, and Reserve Ratios for the Restoration Plan.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

This Board meeting will be webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: April 16, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–9492 Filed 4–16–12; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012164.

Title: KL/WHS Space Charter and Sailing Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd. and Wan Hai Lines (Singapore) PTE Ltd.

Filing Party: Robert B. Yoshitomi, Esq., Nixon Peabody LLP, Gas Company Tower, 555 West Fifth Street, 46th Floor, Los Angeles, CA 90013.

Synopsis: The agreement authorizes K Line and Wan Hai to charter space on their respective vessels, coordinate their sailings, and cooperate in the carriage of cargo in the trade between China, Japan, and the Pacific Coast of the United States.

By Order of the Federal Maritime Commission.

Dated: April 13, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–9390 Filed 4–17–12; 8:45 am]

BILLING CODE 6730–01–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 May 1, 2012.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. *Kevin P. Meehan, Millis, Massachusetts;* to acquire up to 53.18 percent of the outstanding shares of the common stock of MNB Bancorp, Milford, Massachusetts, and thereby acquire shares of The Milford National Bank and Trust Company, Milford, Massachusetts.

Board of Governors of the Federal Reserve System, April 13, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–9322 Filed 4–17–12; 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 May 13, 2012.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Mitsubishi UFJ Financial Group, Inc., The Bank of Tokyo-Mitsubishi UFJ, Ltd, both in Tokyo, Japan, and UnionBanCal Corporation,* San Francisco, California; to acquire 100 percent of the voting shares of Pacific Capital Bancorp and thereby indirectly acquire Santa Barbara Bank & Trust, both of Santa Barbara, California.

In connection with this application, UnionBanCal Corporation has applied to merge with and into Pacific Capital Bancorp.

Board of Governors of the Federal Reserve System, April 13, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–9321 Filed 4–17–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0279]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email within 60 days.

Proposed Project: Institutional Review Board Form—Extension—OMB No. 0990–0279—Office for Human Research Protections.

Abstract: The Office for Human Research Protections (OHRP) and the Food and Drug Administration (FDA) are requesting a three-year extension of the OMB No. 0990–0279, Institutional Review Board (IRB) Registration Form. This form was modified in 2009 to be consistent with IRB registration requirements that were adopted in July 2009 by OHRP and FDA, respectively. Respondents for this information collection are institutions or organizations operating IRBs designated by an institution under an assurance of compliance approved for federalwide use by OHRP under 45 CFR 46.103(a) and that review human subjects research conducted or supported by HHS, or, in the case of FDA's regulation, each IRB in the United States that reviews clinical investigations regulated by FDA under sections 505(i) or 520(g) of the Federal Food, Drug and Cosmetic Act; and each IRB in the United States that reviews clinical investigations that are intended to support applications for research or marketing permits for FDA-regulated products.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
IRB Registration—0279	6,100	2	1	12,200
	900	2	1	1,800
Total				14,000

Keith A. Tucker,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2012–9323 Filed 4–17–12; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Standards Committee; Schedule for the Assessment of HIT Policy Committee Recommendations

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice.

SUMMARY: Section 3003(b)(3) of the American Recovery and Reinvestment Act of 2009 mandates that the HIT Standards Committee develop a schedule for the assessment of policy recommendations developed by the HIT Policy Committee and publish it in the **Federal Register**. This notice fulfills the requirements of Section 3003(b)(3) and updates the schedule posted in the **Federal Register** on May 4, 2011. In anticipation of receiving recommendations originally developed by the HIT Policy Committee, the HIT Standards Committee has created four (4) workgroups to analyze the areas of clinical quality, clinical operations, implementation, and privacy and security. Other groups are convened to address specific issues as needed, such as the Nationwide Health Information Network Power Team, the Consumer/Patient Engagement Power Team, and the Vocabulary Task Force.

HIT Standards Committee's Schedule for the Assessment of HIT Policy Committee Recommendations is as follows:

The National Coordinator will establish priority areas based in part on recommendations received from the HIT Policy Committee regarding health information technology standards, implementation specifications, and/or certification criteria. Once the HIT Standards Committee is informed of those priority areas, it will:

(A) Direct the appropriate workgroup or other special group to develop a report for the HIT Standards Committee, to the extent possible, within 90 days, which will include, among other items, the following:

(1) An assessment of what standards, implementation specifications, and certification criteria are currently available to meet the priority area;

(2) an assessment of where gaps exist (*i.e.,* no standard is available or harmonization is required because more than one standard exists) and identify potential organizations that have the capability to address those gaps; and

(3) a timeline, which may also account for NIST testing, where appropriate, and include dates when the HIT Standards Committee is expected to issue recommendation(s) to the National Coordinator.

(B) Upon receipt of a report from a workgroup or other special group, the HIT Standards Committee will:

(1) Accept the timeline provided by the subcommittee, and, if necessary, revise it; and

(2) Assign subcommittee(s) to conduct research and solicit testimony, where appropriate, and issue recommendations to the full committee in a timely manner.

(C) Advise the National Coordinator, consistent with the accepted timeline in (B)(1) and after NIST testing, where appropriate, on standards, implementation specifications, and/or certification criteria, for the National Coordinator's review and determination whether or not to endorse the recommendations, and possible adoption of the proposed recommendations by the Secretary of the Department of Health and Human Services.

The standards and related topics which the HIT Standards Committee is expected to address over the coming year include, but may not be limited to: Quality measurement; the extended portfolio of standards for the nationwide health information network; distributed queries and results; radiology; consumer-mediated information exchange; public health; data portability; and a process for the maintenance of standards.

For a listing of upcoming HIT Standards Committee meetings, please visit the ONC web site at *http://healthit.hhs.gov.*

Notice of this schedule is given under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), section 3003.

Dated: April 11, 2012.

MacKenzie Robertson,

FACA Program Manager, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–9251 Filed 4–17–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions, and Delegations of Authority; Administration for Community Living

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services establishes the Administration for Community Living in order to achieve several important objectives: reduce the fragmentation that currently exists in Federal programs addressing the community living service and support needs of both the aging and disability populations; enhance access to quality health care and long-term services and supports for all individuals; promote consistency in community living policy across other areas of the Federal government; and complement the community infrastructure, as supported by both Medicaid and other Federal programs, in order to better respond to the full spectrum of needs of seniors and persons with disabilities.

FOR FURTHER INFORMATION CONTACT: Dan Berger, Administration for Community Living, 1 Massachusetts Avenue NW., Washington, DC 20201, 202–357–3419

SUPPLEMENTARY INFORMATION: This notice amends Part B of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration on Aging, as last amended at 75 FR 18219–18228, dated April 9, 2010, and 76 FR 5178, dated January 28, 2011; Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Administration for Children and Families, at Chapter K, Administration on Children and Families, as last amended at 75 FR 60471–60473, dated September 30, 2010, and at Chapter KC, Administration on Developmental Disabilities, as last amended at 76 FR 72418–72420, dated November 23, 2011; Part A of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Office of the Secretary, Immediate Office of the Secretary, at Chapter AA, Immediate Office of the Secretary, as last amended at 76 FR 42710–11, dated July 19, 2011, and at Chapter AAC, Office on Disability, as last amended at 67 FR 70433, dated November 22, 2002; as follows:

I. Delete Part B, ''The Administration on Aging''; in its entirety and replace with the following:

B.00 Mission
B.10 Organization
B.20 Functions

B.00 Mission. The Administration for Community Living (ACL) provides national leadership and direction to plan, manage, develop, and raise awareness of comprehensive and coordinated systems of long-term services and supports that enable older Americans and individuals with disabilities, including intellectual, developmental, and physical disabilities, to maintain their health and independence in their homes and communities. ACL programs support strong State, Tribal, and local community networks designed to respond to the needs of persons with disabilities, older Americans, and their families through advocacy, systems change and capacity building to ensure access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life.

ACL advises the Secretary, Departmental components and other Federal departments and agencies on the development and implementation of policies to improve access to community living services and supports and enhance opportunities for persons with disabilities and older Americans, while retaining discrete policy and programmatic operations that respond to the unique needs of these populations. ACL's visibility within the Department of Health and Human Services and with other Federal agencies helps ensure that Federal policies and programs allow all individuals across the lifespan to live with respect and dignity as full members of their communities.

B.10 Organization. ACL is an Operating Division of the Department of Health and Human Services. ACL is headed by an Administrator, who reports directly to the Secretary. The Administrator is also the Assistant Secretary for Aging. In addition to the Administrator, the ACL consists of the Principal Deputy Administrator, who also serves as the senior advisor to the Secretary on HHS activities relating to disabilities, and Staff and Program Offices. ACL is organized as follows:

Office of the Administrator (BA)
Administration on Aging (BB)
Administration on Intellectual and Developmental Disabilities (BC)
Center for Disability and Aging Policy (BD)
Center for Management and Budget (BE)

B.20 Functions. ACL is the principal agency designated to lead aging and disability programs. More specifically, the provisions of the Older Americans Act (OAA) of 1965 are carried out by its subcomponent, the Administration on Aging; and the provisions of the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) of 2000 are carried out by its subcomponent, the Administration on Intellectual and Developmental Disabilities. ACL also administers programs authorized under Section 398, Title XVII and Title XXIX of the Public Health Service Act (PHSA), as amended, Section 262 and 292 of the Help America Vote Act (HAVA), Section 6021(d) of the Deficit Reduction Act (DRA) of 2005, and implementation and administration of certain provisions of the Elder Justice Act (EJA), as well as continuing support for the President's Committee for People with Intellectual Disabilities.

Develops, recommends and issues policies, procedures, standards and guidelines to provide direction for the programs it administers. Approves or disapproves plans and funding applications for national programs providing community-based long-term services and supports. Administers programs for training, research, demonstration, evaluation and information dissemination. Administers programs related to advocacy, systems change and capacity building. Administers national centers for service development and provides technical assistance to States, Tribal Organizations, local communities and service providers. Serves as the lead Federal agency for adult protection services.

Assists the Secretary in all matters pertaining to opportunities and challenges of persons with disabilities, older Americans, and Americans of all ages about their current and potential future need for information and access to long-term services and supports. Advocates for the needs of these constituencies in program planning and policy development within the Department and in other Federal agencies. Advises the Secretary, Departmental components and other Federal departments and agencies on the characteristics, circumstances and needs of these populations and develops policies, plans and programs designed to promote their welfare.

The functions of the organizational units of ACL are described in detail in the succeeding Chapters.

A. Office of the Administrator (BA):

BA.00 Mission
BA.10 Organization
BA.20 Functions

BA.00 Mission. The Office of the Administrator provides executive direction, leadership, and guidance for ACL programs, and serves as the focal point for the development, coordination and administration of those programs nationwide. The Office advises the Secretary on issues affecting seniors and persons with disabilities.

BA.10 Organization. The Office of the Administrator is headed by the Administrator, who reports directly to the Secretary. The Office of the Administrator includes the Principal Deputy Administrator, who also serves as an advisor to the Secretary on HHS activities relating to disabilities, and the following components:

Immediate Office of the Administrator (BAA)
Office of External Affairs (BAB)
Office of Regional Operations (BAC1–BACX)

BA.20 Functions

1. *Immediate Office of the Administrator (BAA).* The Immediate Office of the Administrator (IOA) is responsible to the Secretary for carrying out ACL's mission and provides executive supervision to the major components of ACL. The Administrator and Principal Deputy both serve as members of the Secretary's senior leadership team, ensuring that Federal policies and programs support the goal of enabling all individuals to live with respect and dignity as fully participating members of their communities.

Sets national policies, establishes national priorities, ensures policy consistency, and directs plans and programs conducted by ACL. Advises the Secretary, HHS Operating Divisions, and other Federal agencies on the characteristics, circumstances, and needs of persons with disabilities, older Americans, and their families and on policies, plans and programs designed to promote their welfare.

Coordinates the development of legislative proposals, testimony, background statements, and other policy documents in activities related to legislation. In coordination with the HHS Office of the Assistant Secretary for Legislation, analyzes proposed and enacted legislation related directly or indirectly to older people and persons with disabilities, including legislation directly affecting ACL programs.

In collaboration with other Federal agencies, develops and implements interagency agreements to advance the concerns and interests of persons with disabilities, older adults, and families of such individuals. Provides liaison to Federal advisory committees. Works with national organizations, professional societies, and academic organizations to identify mutual

interests and plan voluntary and funded approaches to enhance opportunities for community living.

Receives, assesses, and controls incoming correspondence and makes assignments to the appropriate ACL component(s) for response and action; provides assistance and advice to ACL staff on the development of responses to correspondence; and tracks development of periodic reports and facilitates departmental clearance. Maintains official copies of all policy and information issuances and data collection instruments, ensuring adherence to requirements for records management and disposition and Freedom of Information Act.

2. *Office of External Affairs (BAB).* The External Affairs (OEA) supports the Immediate Office of the Administrator in the effective communication of ACL policies, goals, and objectives. In coordination with the Department, manages ACL's media relations and external outreach activities.

Coordinates with the HHS Office of the Assistant Secretary for Public Affairs, including planning and implementing strategy for relations with the news and other information media. Initiates media outreach activities; responds to all media inquiries concerning ACL programs and related issues; develops news releases, feature articles for magazines and other publications on ACL programs and initiatives; and manages preparation and clearance of speeches and official statements on ACL programs.

Implements public education activities to support the achievement of program objectives; develops and distributes publications and audiovisual materials about older people and persons with disabilities and prepares and issues brochures, fact sheets, and exhibits on their needs and concerns and measures to improve the circumstances, available services, and environment for the older population. Develops special information campaigns to inform the general public about issues, problems and benefits important to persons with disabilities and older people. Fosters, plans and coordinates ceremonies and celebrations. Manages the content of ACL Web sites and oversees the development of other social media tools used to inform the public about ACL policies, programs and services. Implements the National Clearinghouse for Long-Term Care Information authorized under Section 6021(d) of the DRA of 2005.

3. *Office of Regional Operations (BAC1–BACX).* The Office of Regional Operations (ORO) includes a coordinating central office liaison and ten Regional Support Centers. The central office regional liaison coordinates the operations of the Regional Support Centers, each of which is headed by a Regional Administrator (RA).

The Regional Support Centers serve as the focal point for the development and coordination of ACL programs within the designated HHS region. Represent the Administrator within the region, providing information for, and contributing to the development of, national programs serving with the elderly and persons with disabilities. Serve as the effective and visible advocate to other Federal agencies in their geographic jurisdiction; advise, consult and cooperate with each Federal agency proposing or administering programs or services; coordinate and assist in the planning and development by public (including Federal, State, Tribal and local agencies) and private organizations of comprehensive and coordinated services and opportunities in each community of the nation; and conduct active public education of government officials and the public to ensure broad understanding of the need for community-based services and supports.

Monitor, assist and evaluate State Agencies and Tribal Organizations administering programs supported under the OAA and other authorizing legislation. Participates in the review of State Plans and recommend approval or disapproval, as appropriate. Participates in the review of applications for Tribal Programs and recommend approval or disapproval applications. Review grantee financial and program reports and provide technical assistance to recipients on fiscal operations. Provide assistance and support for programs authorized under the DD Act.

Advise the Administrator on problems and progress of programs; evaluate the effectiveness of programs and services in the Regions and recommend changes that would improve program operations and enhance effectiveness; and provide guidance to agencies and grantees in applications of policy to specific operational issues requiring resolution. Facilitate interagency cooperation at the Federal, Regional, State and Tribal levels to enhance resources and assistance available to the elderly and persons with disabilities. Disseminate and provide technical assistance regarding program guidelines and developments to States Agencies, Tribal Organizations, and local community service providers.

B. Administration on Aging (BB)

BB.00 Mission
BB.10 Organization
BB.20 Functions

BB.00 Mission. The Administration on Aging (AoA) carries out programs operated under the OAA, Section 398 and Title XVII of the PHSA and implementation and administration of certain provisions of the EJA, including, but not limited to, those concerning the Elder Justice Coordinating Council, the Advisory Board on Elder Abuse, Neglect, and Exploitation, and Adult Protective Services. The Administration on Aging helps elderly individuals maintain their dignity and independence in their homes and communities through comprehensive, coordinated, and cost effective systems of long-term care, and livable communities across the United States.

BB.10 Organization. The Administration on Aging is headed by the Assistant Secretary, who is also the Administrator. The Deputy Assistant Secretary for Aging supports the Assistant Secretary in overseeing the Administration on Aging. The Administration on Aging includes the following components:

Office of the Assistant Secretary on Aging (BBA)
Office of Supportive and Caregiver Services (BBB)
Office of Nutrition and Health Promotion Programs (BBC)
Office of Elder Rights Protection (BBD)
Office of American Indian, Alaskan Native, and Native Hawaiian Programs (BBE)
Office of Long-Term Care Ombudsman Programs (BBF)

BF.20 Functions

1. *Office of the Assistant Secretary on Aging (BBA).* The Office of the Assistant Secretary on Aging (OASA) advises and supports the Administrator, the Secretary, and other elements of the Department in serving as the visible and effective advocate for older people within the Federal Government. Provides leadership and expertise on program development, advocacy and initiatives affecting seniors and their caregivers. Plans and directs grant programs designed to provide planning, coordination and services to older Americans as authorized under the OAA and other legislation.

Performs functions under Title II of the OAA related to consultation with other Federal agencies and the provision of information about aging services, programs and policies in order to enhance coordination and delivery. Supports the Administrator in implementing Section 203(1) of the OAA by coordinating, advising, consulting with and cooperating with

the head of each department, agency and instrumentality of the Federal Government proposing or administering programs or services substantially related to the objectives of the OAA. Oversees the consultation process by which agency heads must consult with AoA before establishing programs or services related to the OAA. Plans and implements the process for the collaboration of all Federal agencies with AoA in the execution by those agencies of programs and services related to the OAA.

Consults with and provides technical assistance to and education for State and Area Agencies on Aging, Tribal grantees, and local community service providers in the development of plans, goals, and system development activities. Ensures that statutory requirements, regulations, policies, and instructions are implemented for mandatory grant programs under Titles III, VI and VII of the OAA, and for the discretionary grant programs under Title II and Title IV of the OAA, as well as Section 398 of the PHSA and the EJA. Oversees disaster assistance and reimbursement activities pursuant to Section 310 of the OAA.

Provides oversight and leadership to the Nutrition Officer established in Title II of the OAA who provides technical assistance and guidance to Regional Support Centers, States, Area Agencies on Aging and community service providers. Provides technical guidance to the Regional Support Centers as they implement the national programs of the OAA and ensures that clear and consistent guidance is given on program and policy directives. Issues substantive operating procedures to guide Central Office and Regional staff in the conduct of their programmatic responsibilities.

At all levels, from national to the local service delivery level, develops methods and collaborations to articulate the problems and concerns of the elderly to organizations beyond the traditional network of agencies and works with these organizations to be more sensitive and responsive to age-related needs and issues. Oversees the international liaison functions of AoA, coordinating AoA international activities with Departmental as well as other Federal agencies, States and national organizations concerned with international aging matters.

2. *Office of Supportive and Caregiver Services (BBB).* The Office of Supportive and Caregiver Services (OSCS) serves as the focal point for the operation, administration, and assessment of the programs authorized under Titles III–B and III–E of the OAA and Section 398 of the PHSA, as well as activities under Titles II and IV of the OAA that are designed to provide information and referral services to seniors and caregivers, and to support technical assistance, outreach, and information dissemination that are culturally and linguistically appropriate in order to meet the needs of diverse populations of older individuals. In addition, the Office performs the functions under Title II of the OAA related to consultation with other Federal agencies and the provision of information about supportive and caregiver services in order to enhance service coordination and delivery.

Implements Titles III–B and III–E of the OAA through the development of regulations, policies and guidance governing the development and enhancement by State and Area Agencies on Aging of comprehensive and coordinated systems of home and community-based supportive and caregiver services. This includes implementing and enhancing systems for home and community-based supportive services, the operation of multi-purpose senior centers, and caregiver support and assistance services.

In coordination with the Office of Nutrition and Health Promotion Programs, provides guidance regarding State Plan processing and approval, the process and criteria for approval of States' Intrastate Funding Formulas for the allocation and targeting of resources within States, and implementation of the Interstate Funding Formula for distribution of Title III–B and III–E funds among States. Through the analysis of State Plans, evaluation findings and other relevant material, identifies potential program and management issues and develops recommendations on possible solutions.

Fosters, oversees, and ensures accountability for the implementation of programs by States and Area Agencies through guidance and direction to Regional staff regarding program reviews and system development and enhancements. Designs and provides training and technical assistance for program compliance, effectiveness, and enhancement. Provides technical and subject matter expertise targeted at enhancing the capabilities of State and Area Agencies and local communities to improve service delivery to older people.

Directs and assesses the development of State-administered home and community-based long-term care systems providing supportive services for the elderly and caregivers. Initiates and encourages expansion of the capacities of home and community-based supportive and caregiver services to deliver comprehensive services to the elderly.

Implements programs under Section 398 of the PHSA, as well as activities under Titles II and IV of the OAA, through the development of demonstrations designed to test the efficacy of new and innovative models in improving the delivery and effectiveness of community-based supportive services for seniors and caregivers. Prepares the planning documents for and develops discretionary grant program announcements. Evaluates demonstration grant and contract proposals; and recommends approval/disapproval. Monitors progress, gives technical guidance to, and evaluates the performance of grantees and contractors.

Promotes the coordination of innovation and demonstration activities with other national, field and local programs related to aging. Develops standards and identifies successful service and systems development strategies and best practice models for use by the Aging Network. Provides technical assistance to Aging Network partners in utilizing the findings from program demonstrations to inform policy and program development and enhance service delivery and coordination at the Federal, State and local level.

3. *Office of Nutrition and Health Promotion Programs (BBC).* The Office of Nutrition and Health Promotion Programs (ONHPP) serves as the focal point for the operation, administration, and assessment of the programs authorized under Titles III–C and III–D of the OAA, as well as the Chronic Disease Self-Management Program under Title XVII of the PHSA and other activities under Titles II and IV of the OAA designed to promote healthy behaviors and improved health status for older people. In addition, the Office performs the functions under Title II of the OAA related to consultation with other Federal agencies and the provision of information about nutrition and preventive health services in order to enhance service coordination and delivery.

Implements Titles III–C and III–D of the OAA through the development of regulations, policies and guidance governing the development and enhancement by State and Area Agencies on Aging of comprehensive and coordinated systems of home and community-based nutrition and preventive health services. Carries out the functions of the designated Nutrition Officer, who coordinates nutritional services under the OAA, develops the regulations and guidelines,

and provides technical assistance regarding nutrition to State and Area Agencies, nutrition service providers, and other organizations. Serves as the liaison to the Department of Agriculture and other Federal agencies and organizations related to nutrition policy and program issues.

In coordination with the Office of Supportive and Caregiver Services, provides guidance regarding State Plan processing and approval, the process and criteria for approval of States' Intrastate Funding Formulas for the allocation and targeting of resources within States, and implementation of the Interstate Funding Formula for distribution of Title III–C and III–D funds among States. Through the analysis of State Plans, evaluation findings and other relevant material, identifies potential program and management issues and develops recommendations on possible solutions.

Fosters, oversees, and ensures accountability for the implementation of programs by States and Area Agencies through guidance and direction to Regional staff regarding program reviews and system development and enhancements. Designs and provides training and technical assistance for program compliance, effectiveness, and enhancement. Provides technical and subject matter expertise targeted at enhancing the capabilities of State and Area Agencies and local communities to improve service delivery to older people.

Directs and assesses the development of State-administered home and community-based long-term care systems providing nutrition and preventive health services for the elderly and caregivers. Initiates and encourages expansion of the capacities of home and community-based nutrition and preventive health services to deliver comprehensive services to the elderly.

Implements the Chronic Disease Self-Management Program under Title XVII of the PHSA as well as other activities under Titles II and IV of the OAA, through the development of demonstrations designed to test the efficacy of new and innovative models in improving the delivery and effectiveness of community-based nutrition, health promotion, and evidenced-based disease prevention. Prepares the planning documents for and develops discretionary grant program announcements. Evaluates demonstration grant and contract proposals; and recommends approval/disapproval. Monitors progress, gives technical guidance to, and evaluates the performance of grantees and contractors.

Promotes the coordination of innovation and demonstration activities with other national, field and local programs related to aging. Develops standards and identifies successful service and systems development strategies and best practice models for use by the Aging Network. Provides technical assistance to Aging Network partners in utilizing the findings from program demonstrations to inform policy and program development and enhance service delivery and coordination at the Federal, State and local level.

4. *Office of Elder Rights Protection (BBD).* The Office of Elder Rights (OERP) serves as the focal point for the operation, administration, and assessment of the elder abuse prevention, legal assistance development, and pension counseling programs under Titles II and VII of the OAA. In addition, OERP administers the Senior Medicare Patrol projects and related activities under Title IV of the OAA and the Health Insurance Portability and Accountability Act of 1997, and serves as the Federal focal point for Adult Protective Services and related activities carried out under the EJA. The Office also works with the Office of the National Long-Term Care Ombudsman to carry out the Long-Term Care Ombudsman Program and the National Ombudsman Resource Center.

Reviews State Plans to determine eligibility for funding under the OAA and recommends approval or disapproval. Implements Title VII in the field, in coordination with the National Long-Term Care Ombudsman, through the provision to Regional Support Centers of guidance and information, and the development and interpretation of Title VII program regulations and policy. Ensures the implementation of guidance and instructions concerning prevention of elder abuse, elder rights and legal assistance development programs. Provides guidance and leadership in the development of the pension counseling program and effective models for nationwide replication.

Fosters, coordinates, and ensures accountability for the implementation of Title VII by States through guidance and direction to Regional staff regarding program reviews, and program and system development and enhancements. Designs and provides training and technical assistance for program compliance, effectiveness, and enhancement. Develops program plans and instructions for AoA Regional Support Centers and State and Area Agencies to improve the Title VII protection and representational programs funded under the OAA.

Coordinates, implements, monitors, and promotes efforts to provide consumer information, education and protection designed to detect, prevent and report error, fraud and abuse in the Medicare and Medicaid programs. Provides in-depth expertise, information, leadership and technical assistance through the Regional Support Centers to the Senior Medicare Patrol network and serves as a reliable clearinghouse of information for the aging network, older persons and their families.

Implements demonstration activities under Titles II and IV of the OAA and the EJA designed to test the efficacy of new and innovative models in improving the delivery and effectiveness of elder rights activities. Prepares the planning documents for and develops discretionary grant program announcements. Evaluates demonstration grant and contract proposals; and recommends approval/disapproval. Monitors progress, gives technical guidance to, and evaluates the performance of grantees and contractors.

Promotes the coordination of innovation and demonstration activities with other national, field and local programs related to aging. Develops standards and identifies successful service and systems development strategies and best practice models for use by the Aging Network. Provides technical assistance to Aging Network partners in utilizing the findings from program demonstrations to inform policy and program development and enhance service delivery and coordination at the Federal, State and local level.

5. *Office for American Indian, Alaskan Native, and Native Hawaiian Programs (BBE).* The Office for American Indian, Alaskan Native, and Native Hawaiian Programs (OAIANNHP) serves as the effective and visible advocate within the Department of Health and Human Services and with other departments and agencies of the Federal Government regarding all Federal policies affecting older individuals who are Native Americans. Works with State, local and Tribal governments providing leadership and coordination of activities, services and policies affecting American Indians, Alaskan Natives and Native Hawaiian elders. Promotes linkages among national Indian organizations, national aging organizations, and national provider organizations with the goal of enhancing the interests of and services to Native American elders. Recommends policies and priorities

with respect to the development and operation of programs and activities relating to individuals who are older Native Americans. The Office coordinates activities among other Federal departments and agencies to ensure a continuum of improved services through memoranda of agreements or through other appropriate means of coordination.

Evaluates outreach under Title III and Title VI of the OAA and recommends necessary action to improve service delivery, outreach, and coordination between Title III and Title VI services. Encourages and assists with the provision of information to older Native Americans to assure a continuum of services. Develops research plans, conducts and arranges for research in the field of Native American aging; collects, analyzes, and disseminates information related to problems experienced by older Native Americans, including information on health status of older individuals who are Native Americans, elder abuse, in-home care, and other problems unique to Native Americans. Develops, implements, and oversees the uniform data collection procedures for Tribal and Native Hawaiian Organizations; and implements and oversees the consultation requirements of Title II as they apply to Native American issues.

Serves as the AoA focal point for the administration of the programs authorized under Title VI and the Native American Organization provisions of Title VII–B of the OAA, including administering grants, cooperative agreements and contracts. Coordinates with the Regional Support Centers to provide program guidance, policy direction, training, technical assistance, and monitoring of Title VI grantees. Oversees the development and operation of Resource Centers on Native American Elders under Title IV of the OAA, which gather information, perform research, provide for dissemination of results, and provide technical assistance and training to those who provide services to Native American elders. Arranges for and manages ongoing training and technical assistance for Title VI grantees. Coordinates additional training and technical assistance with other projects managed by other components of the agency.

6. *Office of Long-Term Care Ombudsman Programs (BBF).* The Office of the Long-Term Care Ombudsman Programs (OLTCOP) carries out the functions established in Section 201(d)(1) of the OAA, serving as the effective and visible advocate regarding Federal policies and laws that may adversely affect the health, safety, welfare, or rights of residents of long-term care facilities.

Reviews Federal legislation, regulations, and policies regarding long-term care ombudsman programs and makes recommendations to the Assistant Secretary for Aging. Coordinates the activities of ACL with other Federal, State and local entities relating to long-term care ombudsman programs; prepares an annual report to Congress on the effectiveness of services provided by State long-term care ombudsman programs; and establishes standards for the training of State long-term care ombudsman staff.

Works with the Office of Elder Rights to administer the Long-Term Care Ombudsman Program and the National Ombudsman Resource Center. Makes recommendations to the Administrator regarding the operation of the National Ombudsman Resource Center, and the review and approval of the provisions in State plans submitted under section 307(a) of the OAA that relate to State Long-Term Care Ombudsman programs.

C. Administration on Intellectual and Developmental Disabilities (BC)

BC.00 Mission
BC.10 Organization
BC.20 Functions

BC.00 Mission. The Administration on Intellectual and Developmental Disabilities (AIDD) advises the Secretary, through the Administrator on Community Living, on matters relating to individuals with intellectual and developmental disabilities and serves as the focal point in the Department to support and encourage the provision of quality services to individuals with developmental disabilities and their families. The Administration on Intellectual and Developmental Disabilities supports States and communities in increasing the independence, productivity and community inclusion of individuals with intellectual and developmental disabilities and ensuring that the rights of all individuals with intellectual and developmental disabilities are protected.

BC.10 Organization. The Administration on Intellectual and Developmental Disabilities is headed by a Commissioner, who reports directly to the Administrator. The Administration on Intellectual and Developmental Disabilities includes the following components:

Office of the Commissioner on Intellectual and Developmental Disabilities (BCA)
Office of Program Support (BCB)
Office of Innovation (BCC)
Office for the President's Committee for People with Intellectual Disabilities (BCD)

BC.20 Functions

1. *Office of the Commissioner on Intellectual and Developmental Disabilities (BCA).* The Office of the Commissioner on Intellectual and Developmental Disabilities (OCIDD) provides executive leadership and management strategies for all components of the Administration on Intellectual and Developmental Disabilities, and serves as the principal advisor to the Administrator, the Secretary, and other elements of the Department for individuals with intellectual and developmental disabilities and their families. Plans, coordinates and controls AIDD policy, planning and management activities which include the development of legislative proposals, regulations and policy issuances for AIDD.

Provides executive direction to AIDD's components and establishes goals and objectives for AIDD programs. Assists states, through the design and implementation of a comprehensive and continuing state plan, in making optimal use of existing Federal and state resources for the provision of services and supports to individuals with intellectual and developmental disabilities and their families to achieve these outcomes.

In concert with other components of ACL as well as other public, private, and voluntary sector partners, develops and implements research, demonstration and evaluation strategies for discretionary funding of activities designed to improve and enrich the lives of individuals with intellectual and developmental disabilities. Serves as a resource in the development of policies and programs to reduce or eliminate barriers experienced by individuals with intellectual and developmental disabilities through the identification of promising practices and dissemination of information. Supports and encourages programs or services and manages initiatives, involving the private and voluntary sectors, that benefit individuals with intellectual, developmental, and other disabilities and their families.

Initiates, executes and supports the development of interagency, intergovernmental and public-private sector agreements, committees, task forces, commissions or joint-funding efforts as appropriate. In coordination with the Office of External Affairs, develops strategies for increasing public awareness of the needs of individuals with intellectual and developmental disabilities, their families, and programs designed to address them.

2. *Office of Program Support (BCB).* The Office of Program Support (OPS) is responsible for the coordination, oversight, management and evaluation of the State Councils on Developmental Disabilities, the Protection and Advocacy Systems, and the University Centers for Excellence in Developmental Disabilities grant programs as authorized by the DD Act. The Office is responsible for the development of procedures and performance standards that ensure compliance with the DD Act and that improve the outcomes of the programs in increasing the independence, productivity and community inclusion of persons with developmental disabilities as well as program outreach activities.

Conducts routine and special analyses of state plans of State Councils on Developmental Disabilities, statement of goals and objectives of State Protection and Advocacy Systems, and five-year plans of the University Centers for Excellence in Developmental Disabilities, to assure consistent application of AIDD program goals and objectives. Provides program development services, develops and initiates guidelines, policy issuances and actions with team participation by other components of AIDD, ACL, HHS and other government agencies to fulfill the mission and goals of the DD Act, as amended.

Ensures the dissemination of grantee results, including project results and information produced by AIDD grantees, by coordinating with the Office of Innovation and the Office of the Commissioner on Intellectual and Developmental Disabilities for information sharing. Manages cross-cutting initiatives with other components of AIDD, ACL, HHS and other government agencies to promote and integrate the grant programs into cross-agency and cross-disability efforts.

3. *Office of Innovation (BCC).* The Office of Innovation is responsible for the coordination, oversight, management and evaluation of the Projects of National Significance, Family Support, and the Direct Support Workers grant programs as authorized by the DD Act. The Office is responsible for the development of procedures that ensure compliance with the DD Act and that improve the outcomes of the programs, grants and contracts in increasing the independence, productivity and community inclusion of persons with intellectual and developmental disabilities. Ensures the dissemination of project results and information produced by AIDD grantees.

OI also administers two formula grants under the HAVA (State and Local Grants for Election Assistance for Individuals with Disabilities and Grants to Protection and Advocacy Systems) that improve accessibility for individuals with the full range of disabilities, including the blind and visually impaired, to polling places, including the path of travel, entrances, exits and voting facilities. Administers a training and technical assistance grant program under the HAVA that provides technical assistance to Protection and Advocacy Systems in their mission to promote the full participation in the electoral process for individuals with the full range of disabilities, including registering to vote, casting vote, and accessing polling places.

Originates and manages cross-cutting research, demonstration and evaluation initiatives with other components of AIDD, ACL, HHS and other government agencies. Coordinates information sharing and other activities related to national program trends with other ACL programs and HHS agencies and studies, reviews and analyzes other federal programs providing services applicable to persons with developmental disabilities for the purpose of integrating and coordinating program efforts.

4. *Office for the President's Committee for People with Intellectual Disabilities (BCD).* The Office for the President's Committee for People with Intellectual Disabilities (PCPID) provides general staff support for a Presidential-level advisory body. It coordinates all meetings and Congressional hearing arrangements; provides such advice and assistance in the areas of intellectual disabilities as the President or the Secretary may request, through the AIDD Commissioner; and prepares and issues an annual report to the President concerning intellectual disabilities and such additional reports or recommendations as the President may require or as PCPID may deem appropriate.

D. Center for Disability and Aging Policy (BD):
BD.00 Mission
BD.10 Organization
BD.20Functions

BD.00 Mission. The Center for Disability and Aging Policy advises and supports the Administrator and Principal Deputy Administrator in developing effective Federal policies and programs to address the needs of individuals with disabilities and the aging of the population. The Center supports, plans, coordinates and oversees the implementation of policies, programs and special initiatives designed to overcome barriers that prevent older Americans and persons with disabilities from fully participating and contributing in an inclusive community life.

BD.10 Organization. The Center for Disability and Aging Policy is headed by a Deputy Administrator, who reports directly to the Administrator. The Center for Disability and Aging Policy includes the following components:

Office of the Deputy Administrator for Disability and Aging Policy (BDA)
Office of Policy Analysis and Development (BDB)
Office of Performance and Evaluation (BDC)
Office of Integrated Programs (BDD)

BD.20 Functions

1. *Office of the Deputy Administrator for Disability and Aging Policy (BDA).* The Office of the Deputy Administrator for Disability and Aging Policy (ODADAP) advises the Administrator, the Principal Deputy Administrator, and the Secretary on matters relating to implementation and coordination of policies, regulations, disability and aging-related programs, and special initiatives within the Department and with other Federal agencies focused on disability and aging. Serve as the focal point within ACL and the Department for disability and aging issues, including the coordination of disability and aging policy, regulations, programs and special initiatives. Supports the coordination of programs within HHS and with Federal, state, community and private sector partners.

Leads the agency's strategic planning, policy analysis, and evaluation functions, including the formulation of short- and long-term strategies for advancing ACL policy and program priorities. Coordinates the development and implementation of the agency's strategic plan that establishes long and short-range goals, objectives, strategies and action plans for advancing the agency's policy and program agenda. Reviews and coordinates all policy and program development documents, regulations and activities to ensure consistency with ACL's strategic plan; and adjusts goals and strategies as appropriate. Coordinates the identification and analysis of emerging policy issues and trends and appropriate Federal responses. Formulates an agency-wide policy and program development strategy consistent with the priorities established by the Administrator and the Principal Deputy Administrator.

Plans and directs the evaluation of ACL programs designed to provide planning, coordination and services to older Americans and people with

disabilities. The Deputy Administrator serves as the Performance Improvement Officer and is the primary liaison with the Office of the Assistant Secretary for Planning and Evaluation, the Office of the Assistant Secretary for Financial Resources, and the Office of Management and Budget for program performance and evaluation activities.

2. *Office of Policy Analysis and Development (BDB).* The Office of Policy Analysis and Development (OPAD) leads policy development on community living by analyzing trends in demographics, service needs, public policy and program development, and translating those trends into new policies and programs in long-term services and supports and health care that assist people with disabilities and elderly individuals to remain in their own homes and communities.

Directs intergovernmental activities as they relate to the agency's policy and program development agenda, and develops and maintains effective relationships with other governmental departments and agencies. Plans, negotiates, facilitates and updates, as appropriate, memoranda of understanding with other departments and agencies to promote agreements and cooperative relationships. Maintains information on, and pursues collaborative opportunities with, other Federal agencies, non-profit organizations and private corporations that have the potential to contribute to the agency's policy and program development priorities.

Provides technical, program and policy development input on legislative activities and the annual budget. Participates in Departmental and inter-departmental activities that concern health and long-term care; reviews and comments on Departmental regulations and policies regarding health programs, institutional and non-institutional long-term care services, and those designed to enhance community living.

Conducts relevant policy research, conducts periodic reviews of needs and resources in the fields of aging and disability, and undertakes qualitative and quantitative analyses to develop policy options and recommendations for the Administrator. Develops policy reports based on the needs and circumstances of older people, their family members and the aging population. Develops and coordinates initiatives with other Federal agencies, national aging organizations, national disability organizations, and universities to fill gaps in information in the field of aging and disability.

3. *Office of Performance and Evaluation (BDC).* The Office of Performance and Evaluation (OPE), in collaboration with the respective ACL program offices, implements, oversees and manages ACL's program performance responsibilities, data collection systems, and program evaluation activities. Develops plans and priorities for evaluation of ACL programs, with subject matter input from appropriate units. Manages contracting for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for ACL, with technical input from other ACL units. Provides technical guidance on evaluation activities conducted as part of ACL's discretionary grants programs.

Implements the requirements of the Government Performance and Results Act of 1993 (GPRA). Interprets ACL goals, priorities, and strategies for consistency with ACL long-range GPRA goals and strategies, and adjusts GPRA goals and strategies accordingly. Provides guidance and technical assistance to ACL organizational units in developing operational plans, particularly in developing measurable objectives and indicators reflecting program and organizational performance. Prepares annual GPRA plans and reports and coordinates with the Office of Budget and Finance on the development of the ACL performance budget.

Coordinates ACL activities related to the collection, analysis, and dissemination of national and program data on older individuals and individuals with disabilities. Develops and manages data requirements; designs the criteria for collecting, analyzing and disseminating program performance data; and prepares the data for reporting to Congress and the public. Designs, implements and provides guidance and technical assistance to funding recipients on data collection and analysis. Coordinates mandated Office of Management and Budget (OMB) approvals required under the Paperwork Reduction Act of 1980, as amended.

Compiles, publishes, and disseminates information on demographic data and data from other Federal agencies on the health, social and economic status of older persons and persons with disabilities. Performs routine and special statistical analyses of data for ACL offices, other Federal and non-Federal organizations, and the general public.

4. *Office of Integrated Programs (BDD).* The Office of Integrated Programs (OIP) plans and directs the implementation of programs designed to coordinate disability and aging issues and enhance access to integrated services and person-centered programs and systems that support community living. Serves as the focal point for the administration the Lifespan Respite Care Program authorized under Title XXIX of the PHSA, the Veteran's-Directed Home and Community-Based Services program, and others as deemed appropriate.

OIP provides leadership and a central strategic focus for ACL's efforts to develop single points of entry to long-term services and supports for both seniors and persons with disabilities. Promotes initiatives to expand access to services and the development of more responsive service systems. Implements partnerships to enhance access to integrate systems of services that support both older Americans and persons of all ages with disabilities. Coordinates with the Veteran's Administration on the development and implementation of their long term services and support programs, including the Veteran's-Directed Home and Community-Based Services program and caregiver supports.

Administers grants, cooperative agreements and contracts and provides technical assistance and training in support of these activities. Coordinates with the Regional Support Centers to provide program guidance, policy direction, training, technical assistance, and monitoring of grantees. Prepares the planning documents for and develops discretionary grant program announcements. Evaluates demonstration grant and contract proposals; and recommends approval/disapproval. Monitors progress, gives technical guidance to, and evaluates the performance of grantees and contractors.

E. Center for Management and Budget (BE):
BE.00 Mission
BE.10 Organization
BE.20 Functions

BE.00 Mission. The Center for Management and Budget advises the Administrator on the budget, financial, grants, information resources, procurement, administrative and human resources management activities of ACL.

BE.10 Organization. The Center for Management and Budget is headed by a Deputy Administrator, who reports directly to the Administrator. The Center for Management and Budget includes the following components:

Office of the Deputy Administrator for Management and Budget (BEA)
Office of Budget and Finance (BEB)
Office of Administration and Personnel (BEC)
Office of Grants Management (BED)
Office of Information Resources Management (BEE)

BE.20 Functions

1. *Office of the Deputy Administrator for Management and Budget (BEA).* The Office of the Deputy Administrator for Management and Budget (ODAMB) directs and coordinates all administrative and resource management activities for ACL. The Deputy Administrator for Management and Budget serves as the Executive Officer and Chief Financial Officer (CFO) and is the principal advisor and counselor to the Administrator on all aspects of the internal administration of ACL.

Serves as the ACL liaison with the Office of the Assistant Secretary for Administration (ASA), the Office of the Assistant Secretary for Financial Resources (ASFR), the OGC, the OIG, and the OMB for all budget and administrative management issues. Develops, administers, and coordinates financial, operational, and budgetary policies, processes, and controls necessary to administer ACL programs and financial resources; directs discretionary and mandatory grants activities; oversees the utilization of information resources, information technology systems and telecommunications management; provides leadership for human capital development; and coordinates ACL's internal control activities.

Coordinates with other components to carry out reviews of program activities and management practices required under the Chief Financial Officers Act, the Federal Managers Financial Integrity Act, the Improper Payments Information Act, the Federal Information Security Management Act, and other legislation. Monitors legislation related to administrative management and provides analysis of the impact on ACL programs and resources. Plans, organizes and conducts studies of organizational structures, functional statements, job structures, staffing patterns, and management and administrative information systems; and identifies and resolves problems of organization and administrative management. Prepares and maintains organizational and functional statements and delegations and designations of authority for ACL.

2. *Office of Budget and Finance (BEB).* The Office of Budget and Finance (OBF) supports the Deputy Administrator for Management and Budget in fulfilling ACL's Chief Financial Officer responsibilities. The OBF Director serves as the Deputy Chief Financial Officer, Budget Officer, and Management Control Officer and oversees and coordinates ACL's budget formulation, budget execution, and financial management activities. OBF serves as the primary liaison with the Program Support Center's Division of Financial Operations, which provides accounting, audit, and financial management services to AoA.

In coordination with the program offices, formulates and presents budget estimates; executes apportionment documents; and plans, directs, and coordinates financial and budgetary programs of ACL. Provides guidance to program offices in preparing budgets, justifications, and other supporting budgetary materials. Solicits, obtains and consolidates information and data from other offices, and prepares budget documents on behalf of the Administrator for presentation to the Department, OMB, and the Congress.

Analyzes the budget as approved by the Congress and apportioned by OMB, obtains input from program offices and recommends for the Administrator's approval a financial plan for its execution. Makes allowances to ACL offices within the guidelines of the approved financial plan. Develops and maintains an overall system of budgetary controls to ensure observance of established ceilings on both program—including all mandatory and discretionary grant accounts—and Salaries and Expense funds; maintains administrative control of funds against allotments and allowances; certifies funds availability for all accounts; and coordinates the management of interagency agreement activities. Prepares requests for apportionment of appropriated funds; and prepares spending plans and status-of-funds reports for the Administrator.

Develops financial operating procedures and manuals; coordinates financial audits; and provides analysis on financial issues. Ensures that internal controls are in place for administrative and programmatic activities that provide reasonable assurance of the effectiveness and efficiency of operations and compliance with applicable laws and regulations. Conducts annual reviews and assessments of internal controls required under the Federal Managers Financial Integrity Act and ensures compliance with the GAO and OMB standards. Serves as the liaison with the Office of the Secretary and OMB on all budgetary and financial matters.

Coordinates all travel management activities. Provides technical assistance and oversight on the use of the GovTrip system; manages employee participation in the Travel Charge Card program, and coordinates the provision of Travel Management Center services.

3. *Office of Administration and Personnel (BEC).* The Office of Administration and Personnel (OAP) provides support to ACL in the areas of human capital development, personnel, facilities, acquisitions, and other administrative services. The OAP Director serves as the Chief Human Capital Officer and provides leadership for the strategic planning and operational management of human capital resources. OAP serves as the primary liaison to the Program Support Center's Division of Acquisition Management, which provides procurement services to ACL; and the National Capital Region Human Resources Center, which provides personnel support services.

Develops and implements human capital strategies and strategic workforce plans; directs the development and creation of strategies to attract diverse talent and develop a highly skilled workforce; and provides leadership in the development of plans for achieving short- and long-range human capital goals. Provides leadership and guidance to meet the human resource management needs and coordinates internal and external resources to provide staff with personnel services including position management, performance management, employee recognition, staffing, recruitment, employee and labor relations, employee assistance, payroll liaison, staff development and training, and special hiring and placement programs.

Provides oversight and direction to meet the administrative needs of ACL components. Prepares, coordinates and disseminates information, policy and procedural guidance on human resource and administrative management issues on an agency-wide basis. Serves as liaison with the Office of the Secretary and the General Services Administration (GSA) to plan, develop and coordinate space and facilities services. Serves as the lead for coordination and liaison with Departmental, GSA, Federal Protective Service, and other Federal agencies for planning and executing the agency's environmental health, safety and physical security programs. Provides coordination and direction for Continuity-of-Operations activities.

Assists other ACL components in securing contractor assistance by advising on appropriate acquisition vehicles, developing statements of work and independent cost estimates, and managing the technical aspects of contracts. Coordinates with the Office of Information Resources Management to develop and implement procurement strategies for information technology

support services and review all information technology acquisition documentation for compliance with applicable laws and regulations. Monitors the use of credit cards for small purchases and establishes and manages contracts and/or blanket purchase agreements for administrative support and facilities management services.

4. *Office of Grants Management (BED).* The Office of Grants Management (OGM) serves as ACL's focal point for the management, leadership and administration of grants, and cooperative agreements. The OGM Director serves as the Chief Grants Management Officer and provides national policy oversight and development for grants management and administration matters. The Office ensures that all grant awards conform to applicable statutory, regulatory, and administrative policy requirements, both before and following award. Maintains liaison and coordination with appropriate ACL and HHS organizations to ensure consistency between discretionary and mandatory grant award activities, including the Program Support Center's Division of Payment Management, which provides payment system services for grants.

Ensures that the administrative, business and financial management aspects of grants administration are carried out and grantee performance is monitored. Performs cost analysis/budget analysis for all discretionary grant award documents and negotiates grant budgets, executing all awards. Advises management and program officials in developing, implementing and evaluating program plans, strategies, regulations, announcements, guidelines and procedures. Only the Office of Grants Management has the authority to obligate the Government to the expenditure of funds for grants and cooperative agreements. Serves as liaison with other Departmental offices for grants policy and administration.

Issues grant awards pursuant to requirement established in authorizing legislation, and makes adjustments to previously issued mandatory grant awards. In coordination with all Central Office and Regional Support Centers, reviews and assesses grant award procedures; directs and/or coordinates management initiatives to improve grant programs in financial areas; develops proposals for improving the efficiency in awarding grants and coordinating financial operations among grant programs; establishes priorities and develops procedures for grantee financial monitoring; and reviews activities at the field level for all grant programs.

For grant activities, develops financial management standards and provides guidance on and interpretation of applicable Federal regulations. Based on grants management policies and procedures approved by the Department, reprograms grant funds as required under authoring legislation. Following consultation with all Central Office and Regional Support Centers having grant administrative responsibilities, and with the approval of the Administrator, develops instructions and procedures for the administration of the business aspects of all grants.

Provides training, technical assistance, overall guidance, monitoring and assistance to ACL staff in all areas of administrative and financial management of grants. Has primary responsibility for developing grants management policy issuances, and ensuring consistent policy interpretation within ACL concerning grants management. Serves as the liaison with the GAO and the HHS OIG on grant matters. Assists at grant hearings, before the Departmental Appeals Board, in response to disallowances and other financial claims. Responds to Departmental and OIG audit reviews, ensuring proper analysis and resolution of audit findings by Regional Support Centers for final action by the Administrator. Coordinates receipt and processing of all grants and related materials.

5. *Office of Information Resources Management (BEE).* The Office of Information Resources Management (OIRM) oversees and coordinates the provision of information technology services for ACL. The OIRM Director serves as the Chief Information Officer and prepares, coordinates and disseminates information, policies, standards, guidelines, and procedures on information technology management issues. OIRM serves as the primary liaison to the HHS Office of Information Technology Infrastructure Operations, which provides for the management, maintenance and operation of ACL's information technology systems infrastructure, including the LAN, personal computers, software, and support services.

Manages the development of ACL custom applications, systems, and Web sites; oversees training and technical assistance for all systems, hardware and software; and coordinates the preparation of manuals and policy issuances required to meet the instructional and informational needs of users of the systems. Directs and coordinates ACL's systems security responsibilities, including protection, security and integrity of data; and is responsible for establishing and maintaining a secure Inter- and intranet presence. Represents ACL on the Department's Chief Information Officer's Council and other Departmental information technology policy and planning boards, teams, and workgroups.

In coordination with the Office of Administration and Personnel, develops and implements procurement strategies for information technology support services. Reviews all information technology acquisition documentation for compliance with applicable laws and regulations and defines the specifications for procurement of all hardware and software. Identifies opportunities to share information technology services through inter-governmental, inter-departmental and inter-agency agreements.

Serves as liaison with the Office of the Secretary, GSA, and outside vendors to plan, develop and coordinate guidelines and activities for telecommunications services. Provides telecommunications planning and management, including procurement, installation, and maintenance of telecommunications equipment and services such as telephones, cellular phone service, cable TV service, and audio and video conferencing equipment and services.

II. Delete Part K, delete Chapter KC, ''The Administration on Developmental Disabilities'' in its entirety and delete reference to ''Administration on Developmental Disabilities (KC)'' in Chapter K, ''Administration for Children and Families,'' Section K.10 Organization.

III. Under Part A, delete Chapter AAC, ''The Office on Disability'' in its entirety and delete reference to ''Office on Disability (AAC)'' in Chapter AA, ''Immediate Office of the Secretary,'' Section AA.10 Organization.

IV. *Delegations of Authority:* All delegations and re-delegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further re-delegations.

V. *Funds, Personnel and Equipment:* Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

Dated: March 27, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–9238 Filed 4–16–12; 11:15 am]

BILLING CODE 4150–03–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: ''CHIPRA Pediatric Quality Measures Program Candidate Measure Submission Form.'' 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 18, 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@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Pediatric Quality Measures Program

Section 401(a) of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3, amended the Social Security Act (''the Act'') to enact section 1139A (42 U.S.C. 1320b–9a). Section 1139A(b) charged the Department of Health and Human Services (HHS) with improving pediatric health care quality measures. Since CHIPRA was passed, AHRQ and the Centers for Medicare & Medicaid Services (CMS) have been working together to implement selected provisions of the legislation related to children's health care quality. An initial core measure set for voluntary use by Medicaid and Children's Health Insurance Programs (CHIP) was posted December 29, 2009 (*http://www.gpo.gov/fdsys/pkg/FR–2009–12–29/html/E9–30802.htm*). In February 2010, CMS released a State Health Official letter which outlined the initial core measures and how these measures would be reported to CMS.

Subsequently, AHRQ and CMS established the CHIPRA Pediatric Quality Measures Program (PQMP) in accordance with section 1139A(b)(1) of the Act to enhance select children's health care quality measures and develop new measures (*http://www.ahrq.gov/chipra*). The PQMP is intended to increase the portfolio of measures available to public and private purchasers of children's health care services, providers, and consumers. HHS anticipates that measures ultimately included in the Improved Core Set will also be used by public and private purchasers to measure pediatric healthcare quality. The PQMP consists of the following:

(1) Seven Centers of Excellence (CoEs) that are developing and/or enhancing children's health care quality measures through cooperative agreements with AHRQ in order to increase the portfolio of measures available to the public and private purchasers of children's health care services, providers and consumers (*http://www.ahrq.gov/chipra/pqmpfact.htm*);

(2) CHIPRA Coordinating and Technical Assistance Center (CCTAC);

(3) Two CHIPRA quality demonstration grantees (Illinois, a partner to the Florida grantee, and Massachusetts) funded by CMS to undertake new quality measure development as part of their grants *http://www.insurekidsnow.gov/professionals/CHIPRA/grants_summary.html*; and

(4) The Subcommittee on Children's Healthcare Quality Measures of the AHRQ National Advisory Council on Healthcare Research and Quality (SNAC) that will review measures nominated through a public call for measures, as well as measures developed or enhanced by the CoEs, and make recommendations for an improved core set of children's health care quality measures and other CHIPRA purposes (*http://www.ahrq.gov/chipra/panellist11.htm*).

Section 1139A of the Act provides that improved core sets of children's health care quality measures be identified beginning January 1, 2013, and annually thereafter, for potential voluntary use by Medicaid and CHIP programs and other CHIPRA purposes. AHRQ intends to solicit nominations for children's health care quality measures for these purposes using a standard measure nomination form early in calendar years 2013 and 2014 through a public call for measures. These solicitations will be undertaken by AHRQ to identify children's health care quality measures for review by the SNAC.

Section 1139A(b)(2) of the Act requires that the measures in the improved core sets shall, at a minimum, be:

(A) Evidence-based and, where appropriate, risk adjusted;

(B) Designed to identify and eliminate racial and ethnic disparities in child health and the provision of health care;

(C) Designed to ensure that the data required for such measures is collected and reported in a standard format that permits comparison of quality and data at a State, plan, and provider level;

(D) Periodically updated; and

(E) Responsive to the child health needs, services, and domains of health care quality described in clauses (i), (ii), and (iii) of subsection (a)(6)(A).

Hence, AHRQ, CMS, and PQMP developed a CHIPRA Pediatric Quality Measures Program (PQMP) Candidate Measure Submission Form (hereinafter referred to as ''CHIPRA PQMP Candidate Measure Submission Form'') and a Glossary of Terms. The CHIPRA PQMP Candidate Measure Submission Form and Glossary of Terms detail the measure evaluation criteria and related definitions to provide operational guidance for the minimum evaluation criteria as specified in section 1139A(b)(2) of the Act. AHRQ intends to use this CHIPRA PQMP Candidate Measure Submission Form to conduct a public call for measures early in calendar years 2013 and 2014 to solicit measures for consideration by the SNAC for the 2014 and 2015 improved core sets of children's health care quality measures for voluntary use by Medicaid and CHIP programs and for other CHIPRA purposes.

The goals of the CHIPRA PQMP Candidate Measure Form project are to:

(1) Solicit nominations for children's health care quality measures early in calendar years 2013 and 2014 through public calls for measures, using a standardized data collection form;

(2) Use the information provided through the standardized data collection form to support SNAC review of children's health care quality measures nominated by the public and measures developed by the seven CoEs; and

(3) Identify measures for improved core sets of children's health care quality measures and for other CHIPRA purposes.

The process for review of the measures developed by the seven COEs will be the same as that for measures submitted in response to calls for public nominations.

Respondents to these public calls for measures in 2013 and 2014 are expected to include pediatricians, researchers, measure developers, and measure stewards of children's health care quality measures.

This project is being conducted by AHRQ pursuant to AHRQ's statutory authority under Title IX of the Public Health Service Act to conduct and support research to improve health care quality, and to fulfill a number of requirements under Title IV of CHIPRA, including requirements to identify candidate measures for public posting of an improved core set of children's health care quality measures by January 1, 2014 and January 1, 2015.

Method of Collection

To achieve the goals of this project, AHRQ intends to solicit submission of measures from the members of the public using the CHIPRA PQMP Candidate Measure Submission Form, a standardized data collection tool. Data collection using the CHIPRA PQMP Candidate Measure Submission Form will be adequate to achieve the goals of the project. Below is an outline of the type of data collected through the CHIPRA PQMP Candidate Measure Submission Form and description of the information solicited from each nominator pursuant to section 1139A(b)(2) of the Act.

1. Basic measure information, including: measure name, measure description, denominator statement (if applicable), numerator statement (if applicable), data sources, exclusions, measure owner and/or copyright owner and any other applicable proprietary rights (e.g., patent or data rights), any confidentiality or trade secret protections, National Quality Forum (NQF) identification number (if applicable; i.e., if the measure has been endorsed by NQF), and whether part of a measure hierarchy (e.g., a collection of measures, a measure set, a measure subset as defined at *http://www.qualitymeasures.ahrq.gov/about/hierarchy.aspx*).

2. Detailed measure specifications: Description of how a measure would be calculated from appropriate data sources.

3. Importance of the measure: Description of how the measure meets one or more of the following criteria for importance, citing scientific literature and providing references: importance to Medicaid and/or CHIP program, including the extent to which Medicaid/CHIP policies can stimulate improvement on the measure, and relevance to Early Periodic Screening, Diagnosis, and Treatment benefit; potential for quality improvement and reduction of disparities in quality; health importance/prevalence of condition; health importance/severity and burden (including impact on children, families and societies); overall cost burden to patients, families, public and private payers, or society more generally currently and over the life span of the child; association of measure topic to children's current or future health; how the underlying concept of the measure changes in meaning and manifestation (if at all) across developmental stages.

4. Settings, services, measure domains, and populations addressed by the measure. CHIPRA asks that the improved core sets cover the following domains of healthcare quality for children at a minimum: the duration of children's coverage over a 12 month time period; the availability and effectiveness of a full range of: (i) Preventive services, treatments, and services for acute conditions, including services to promote healthy birth, prevent and treat premature birth, and detect the presence or risk of physical or mental conditions that could adversely affect growth and development; (ii) treatments to correct or ameliorate the effects of physical and mental conditions, including chronic conditions, in infants, young children, school-age children, and adolescents; (iii) the availability of care in a range of ambulatory and inpatient health care settings in which such care is furnished; and, (iv) the types of measures that, taken together, can be used to estimate the overall national quality of health care for children, including children with special needs, and to perform comparative analyses of pediatric health care quality and racial, ethnic, and socioeconomic disparities in child health and healthcare for children. Nominations will need to identify all settings, services, measure domains, and populations that a measure addresses.

5. Evidence for focus of the measure: The evidence base for the focus of the measures included in the January 1, 2014 and January 1, 2015 improved core sets will be made explicit and transparent; thus, it is critical for nominations to specify the scientific evidence or other basis for the focus of the measure, including a brief description of the evidence base or rationale for the relationship between the measure and a significant structure, process, or outcome that influences children's health and health care.

6. Scientific soundness of the measure: Explanation of methods to determine the scientific soundness of the measure itself, including results of all tests of validity and reliability, including description(s) of the study sample(s) and methods used to arrive at the results. Also, information on how characteristics of the data system/data sources may affect validity and reliability of the measure.

7. Identification of disparities: CHIPRA requires that quality measures be able to identify disparities by race, and ethnicity, and be responsive to domains of health care quality such as socioeconomic status, and special health care needs. Nominations will provide evidence (if available) from testing of measures with diverse populations (considering that diversity may include race, ethnicity, rural populations, inner city populations, special health care needs, socioeconomic status, and/or insurance source, especially Medicaid or CHIP) to assess measure's performance for disparities identification.

8. Feasibility: Description of the measure's feasibility, including: availability of data in existing data systems; opportunities/pathways for implementation; extent to which the measure has been used or is in use (or has not been used), including settings in which it has been used; data collection methods that have been used; eligible populations and results of testing in the eligible populations, including an estimation of the population size required to gain adequate numbers of observations for reliable comparisons, such as estimates of the required population sizes to gain adequate numbers for stratification by race, ethnicity, special health care need, and socioeconomic status.

9. Levels of aggregation: CHIPRA states that data used in quality measures must be collected and reported in a standard format that permits comparison (at minimum) at State, health plan, and provider levels. Nominations will provide information on all levels of aggregation at which the measure is primarily intended to apply (e.g., State (Medicaid and CHIP populations), health plan, hospital, practice, provider, patient) and at which the measure has been tested.

10. Understandability: CHIPRA states that the core set should allow purchasers, families, and health care providers to understand the quality of care for children. Nominations will include a description of the usefulness of the measure to purchasers, families,

and health care providers and present results from efforts to assess the understandability of the measure.

11. Health Information Technology: Nominations will provide information on health information technology (HIT) that has been or could be incorporated into the measure calculation.

12. Additional Disclosures and Notices: All nominations will include contact information for the measure submitter, including: (a) Name, (b) Title, (c) Organization, (d) Mailing address, (e) Telephone number, and (f) email address. Further, all nominations will include a written statement disclosing the proprietary and/or confidentiality status of the measure and full measure specifications, as described in the Basic Measure Information category. This statement must be signed by the applicable rights holder(s) or an individual authorized to act on its behalf for each submitted measure or instrument. If signed by an authorized individual, the statement must describe the basis for such authorization. Submitters are encouraged to disclose the terms under which the measure and full measure specifications are currently made available to interested parties—for example, a standard license and/or nondisclosure agreement, or a statement describing the terms thereof. Should HHS accept the measure for the 2014 and/or 2015 Improved Core Measure Sets, full measure specifications for the accepted measure will be subject to public disclosure (e.g., on the AHRQ and/or CMS Web sites). In addition, AHRQ expects that measures and full measure specifications will be made reasonably available to all interested parties.

The information resulting from this data collection will be used to: (a) Improve and strengthen the initial core set of measures of health care quality measures established under CHIPRA in December 2009 (*http://www.gpo.gov/fdsys/pkg/FR-2009–12-29/html/E9-30802.htm*), (b) expand on existing pediatric quality measures used by public and private health care purchasers, and (c) increase the portfolio of evidence-based consensus pediatric quality measures available to public and private purchasers of children's health care services, providers, and consumers.

Each measure nominated by members of the public will be reviewed by members of SNAC using the categories of evaluation criteria detailed in the CHIPRA PQMP Candidate Measure Submission Form. SNAC will make recommendations to NAC which in turn make recommendations to the AHRQ Director for consideration of select measures for inclusion in the public posting of an improved core set by January 1, 2014 and January 1, 2015 for voluntary use by Medicaid and CHIP programs and other CHIPRA purposes.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for members of the public who will nominate measures through use of the online CHIPRA PQMP Candidate Measure Submission Form. We anticipate a maximum of 50 nominations each year with each nomination requiring three hours. The total burden is estimated to be 150 hours annually.

Exhibit 2 shows the estimated annualized cost burden for respondents' to complete the online submission form for the public call for measures. The total cost burden is estimated to be $11,801 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection	Number of nominations	Number of responses per nominations	Hours per response	Total burden hours
CHIPRA PQMP Candidate Measure Submission Form	50	1	3	150

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection	Number of nominations	Total burden hours	Average hourly wage rate*	Total cost burden
CHIPRA PQMP Candidate Measure Submission Form	50	150	$78.67	$11,801

*Based upon the mean of the average wages for 29–1065 (Pediatricians, General), $78.67 per hour, National Compensation Survey: Occupational wages in the United States May 2009, U.S. Department of Labor, Bureau of Labor Statistics. Although the measure nominations will be solicited from the general public, AHRQ is using the wage rate for pediatricians since our expectation is that respondents to the 2013 and 2014 public call for measures will primarily be pediatricians who will be measure developers or measure stewards of children's health care quality measures.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost over 3 years to the government for conducting this project. The total cost is estimated to be $275,270.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$16,205	$5,402
Data Collection Activities	46,553	15,518
Data Processing and Analysis	43,190	14,397
Publication of Results	53,938	17,979
Project Management	22,620	7,540
Overhead	92,764	30,921

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST—Continued

Cost component	Total cost	Annualized cost
Total	275,270	91,757

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 healthcare research and healthcare 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: April 6, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–9105 Filed 4–17–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12IG]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly S. Lane, at CDC 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Written comments should be received within 60 days of this notice.

Proposed Project

Targeted Surveillance and Biometric Studies for Enhanced Evaluation of Community Transformation Grants—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Prevention and Public Health Fund (PPHF) of the Patient Protection and Affordable Care Act of 2010 (ACA) provides an important opportunity for states, counties, territories and tribes to advance public health across the lifespan and to reduce health disparities. The PPHF authorizes Community Transformation Grants (CTG) for the implementation, evaluation, and dissemination of evidence-based community preventive health activities. The CTG Program emphasizes five strategic directions: (1) Tobacco-free living, (2) active lifestyles and healthy eating, (3) high impact, evidence-based clinical and other preventive services, (4) social and emotional well-being, and (5) healthy and safe physical environments.

The CTG Program is administered by the Centers for Disease Control and Prevention (CDC), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). As required by Section 4201 of the ACA, CDC is responsible for conducting a comprehensive evaluation of the CTG Program which includes assessment over time of measures relating to each of the five strategic directions. CDC is requesting OMB approval to collect information needed for these assessments. The information collection will include population-level and targeted surveillance of high interest indicators for a range of age groups in select CTG communities, as well as enhanced evaluation studies designed to assess the potential impact of specific CTG strategies on health outcomes.

CDC plans to conduct the Adult Targeted Surveillance Survey (ATSS) in 20 CTG communities. Ten communities that have already received CTG cooperative agreements (group A) will participate in the ATSS in 2012, 2014, and 2016, and ten communities that will receive CTG funding in fiscal year 2013 (group B) will participate in the ATSS in 2013, 2015, and 2017. The ATSS will be administered by telephone to a representative sample of 1,000 adult residents in each community for an estimated annualized number of respondents of 10,000. Respondents will be asked to provide information about household practices and their personal behaviors specific to the five strategic directions (e.g., nutrition). Responses will be used to monitor changes in relevant attitudes, risk behaviors, and other behavioral factors in specific geographic areas where CTG cooperative agreement awardees are implementing interventions related to CTG strategic directions. Information from the targeted surveillance surveys will be compared with data from other local, state or national surveillance systems. During the initial three-year OMB clearance period, the ATSS will be administered to a total of 20,000 respondents in group A communities and 10,000 respondents in group B communities.

CDC's CTG Program evaluation plans also include enhanced evaluation activities and special studies fulfilling the congressional mandate to expand the evidence base of effective public health interventions across a range of settings, population subgroups, and health outcomes. These studies will include use of mixed-method approaches and observational and outcome data collection in select communities. The initial selected studies will address biometric changes specific to CTG interventions; the

school environment; health disparities; and use of media. New studies will be added in subsequent years to address additional key areas with important public health impact.

CDC is requesting OMB approval to conduct the Youth and Adult Biometric Study (YABS), one of the above mentioned special studies, in 10 CTG areas that are implementing evidence-based strategies to prevent exposure to secondhand smoke and to improve nutrition and physical activity among children and adults. The YABS will examine the impact of CTG strategies on biometric markers of health status including weight, height (i.e., body mass index or BMI), waist circumference, secondhand smoke exposure, and blood pressure.

Participants in the YABS will be drawn from two samples of households. The first sample will be a targeted sub-sample of ATSS-respondent households that have at least one child between the ages of 3–17 years. The second sample of households will be recruited from an address listing that contains households with children in school catchment areas of high interest for assessing CTG interventions targeted to prevent childhood obesity. Data collection for both samples will be identical, with one exception. Adults from the second sample will be asked at the beginning of the phone call to participate in the telephone-based ATSS interview and YABS. Adults in the ATSS sub-sample will be asked to participate in YABS at the completion of the phone call, in order to maintain the ATSS interview as the priority for this set of respondents.

Each adult respondent in the YABS will be asked to participate in an in-home visit with a trained interviewer, who will collect biometric data about the respondent such as height, weight, saliva, blood pressure, etc. The adult respondent will also be asked to provide information about his or her activity level over a one-week period. Objective measures of activity will be collected through use of an accelerometer, i.e., an electronic meter worn next to the body. In addition, the respondent will maintain a hardcopy activity diary to assist in interpreting the accelerometry data. An adult YABS respondent who is the parent or guardian of a child in the household will be asked to allow one child (age 3–17 years) to participate in the youth component of the YABS. With the child's assent, similar biometric and activity measures will be collected from the child. If the child is between 3 and 8 years of age, the parent or guardian will be asked to complete a Caregiver Survey about the child's behaviors. If the child is between 9 and 17 years of age, he or she will be asked to complete a Youth Survey.

The information to be collected will allow CDC to estimate the effect of all CTG interventions on health behaviors and health outcomes in adults and children ages 3–17 years, and to estimate the independent effect of school-based interventions in youth. OMB approval is requested for the first three years of the five-year CTG project period. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Adults in CTG Awardee Communities.	Adult Targeted Surveillance Survey	10,000	1	30/60	5,000
Adult Participants in the Youth and Adult Biometric Study.	Adult Targeted Surveillance Survey	1,300	1	30/60	650
	Adult Biometric Measures	2,500	1	20/60	833
	Adult Activity Diary	500	1	20/60	167
	Caregiver Survey	1,000	1	15/60	250
Child Participants in the Youth and Adult Biometric Study.	Child Biometric Measures	2,000	1	15/60	500
	Child Activity Diary	500	1	10/60	83
	Youth Survey	1,000	1	15/60	250
Total					7,733

Kimberly S. Lane,

Deputy Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–9356 Filed 4–17–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10185 and CMS–10429]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently

approved collection; *Title of Information Collection:* Medicare Part D Reporting Requirements and Supporting Regulations; *Use:* Title I of 42 CFR, part 423, § 423.514, requires each Part D Sponsor to have an effective procedure to provide statistics indicating: the cost of its operations, the patterns of utilization of its services, the availability, accessibility, and acceptability of its services, information demonstrating it has a fiscally sound operation and other matters as required by CMS. In addition, subsection 423.505 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA), establishes as a contract provision that Part D Sponsors must comply with the reporting requirements for submitting drug claims and related information to CMS. Data collected via Medicare Part D Reporting Requirements is an integral resource for oversight, monitoring, compliance and auditing activities necessary to ensure quality provision of the Medicare Prescription Drug Benefit to beneficiaries. The data collected will be validated, analyzed, and utilized for trend reporting.

The revisions for the CY2013 include the removal, addition or both of data elements for the Prompt Payment by Part D Sponsors, Grievances, Fraud, Waste, and Abuse Compliance Programs, and Plan Oversight of Agents reporting sections; however, these changes resulted in no changes to the burden for these sections. In addition, we added data elements and revised data elements for the Medication Therapy Management Programs and the Coverage Determinations and Exceptions reporting sections, which resulted in an increase in burden hours for both sections. Lastly, we removed the following reporting sections and decreased burden estimates associated with these sections because these data are no longer necessary for monitoring through these reporting requirements: Access to Extended Day Supplies at Retail Pharmacies; and Pharmacy Support of E-prescribing. *Form Number:* CMS–10185 (OCN: 0938–0992); *Frequency:* Yearly, Quarterly, Semi-Annually; *Affected Public:* Private Sector, business or other for-profit; *Number of Respondents:* 3,180; Total *Annual Responses:* 48,152; *Total Annual Hours:* 76,240. (For policy questions regarding this collection contact LaToyia Grant at 410–786–5434. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection (Request for a new OMB Control Number). *Title of Information Collection:* Surveys of Physicians and Home Health Agencies to Assess Access Issues for Specific Medicare Beneficiaries as Defined in Section 3131(d) of the ACA. *Use:* This collection is part of a study called for under section 3131(d) of the Patient Protection and Affordable Care Act (ACA). The study is focused on two major issues: (1) Supporting CMS' efforts to improve payment accuracy and (2) understanding issues of access for the ACA populations under the existing home health prospective payment system. The study team's analytic plan focuses on understanding payment accuracy for the specific study populations through claims and cost data analyses, which will reflect payments and costs for patients who have gained access to home health care. In order to understand access issues for the ACA defined populations, the study team proposes using survey instruments to better understand the characteristics of Medicare beneficiaries who are not able to gain access to or have experienced delays in gaining access to home health services.

As a new collection, the information collected is expected to support CMS' efforts to improve the home health prospective payment system payment accuracy for vulnerable populations and thereby ensure the payment system does not inadvertently cause avoidable access problems. The questions are designed to provide insights into access issues for vulnerable populations that cannot be learned through analyses of administrative data. *Form Number:* CMS–10429 (OCN: 0938–New); *Frequency:* Once. *Affected Public:* Private Sector (business or other for-profit and not-for-profit institutions). *Number of Respondents:* 875. *Total Annual Responses:* 292. *Total Annual Hours:* 73. (For policy questions regarding this collection contact Kristy Chu at 410–786–8953. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *June 18, 2012:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs,
Division of Regulations Development,
Attention: Document Identifier/OMB Control Number_____,
Room C4–26–05,
7500 Security Boulevard,
Baltimore, Maryland 21244–1850.

Dated: April 12, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–9258 Filed 4–17–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–668B, CMS–1557 and CMS–10399]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection. *Title of*

Information Collection: Post Clinical Laboratory Survey Questionnaire and Supporting Regulations in 42 CFR 493.1771, 493.1773, and 493.1777. *Use:* Form CMS–668B is used by a Clinical Laboratory Improvement Amendments (CLIA) laboratory to express its satisfaction with the survey process and to make recommendations for improvement. Surveyors furnish this form to all laboratories that receive either an onsite survey or the Alternate Quality Assessment Survey (i.e., paper survey of quality indicators). CMS Central Office performs an overview evaluation of the completed forms. Each calendar year, a summary of the information collected is sent to the State and CMS Regional Office. *Form Number:* CMS–668B (OCN 0938–0653). *Frequency:* Biennially; *Affected Public:* Business or other for-profits and not-for-profit institutions. State, Local, or Tribal Government, Federal Government. *Number of Respondents:* 21,000. *Total Annual Responses:* 10,500. *Total Annual Hours:* 2,625. (For policy questions regarding this collection contact Kathleen Todd at 410–786–3385. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection. *Title of Information Collection:* Survey Report Form for Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations in 42 CFR 493.1–493.2001. *Use:* CMS 1557 is used to report surveyor findings during a CLIA survey. For each type of survey conducted (i.e., initial certification, recertification, validation, complaint, addition/deletion of specialty/subspecialty, transfusion fatality investigation, or revisit inspections) the Survey Report Form incorporates the requirements specified in the CLIA regulations. *Form Number:* CMS–1557 (OCN 0938–0544). *Frequency:* Biennially. *Affected Public:* Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Governments and Federal Government. *Number of Respondents:* 21,000. *Total Annual Responses:* 10,500. *Total Annual Hours:* 5,248. (For policy questions regarding this collection contact Kathleen Todd at 410–786–3385. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Analysis of Transportation Barriers to Utilization of Medicare Services by American Indian and Alaska Native Medicare Beneficiaries; *Use:* The purpose of the proposed study is to identify and analyze transportation barriers associated with the utilization of Medicare services by American Indian and Alaska Native (AI/AN) beneficiaries, to identify and analyze the health outcomes resulting from those barriers, and ultimately to identify potential solutions that could help mitigate the problem and produce meaningful improvements in health care use and health outcomes for this population. Specifically, the information that will be collected through the use of instruments and the study developed under the Analysis of Transportation Barriers to Utilization of Medicare Services by American Indian and Alaska Native Medicare Beneficiaries Project has not been collected or evaluated previously by any agency or individual, so data on the extent of transportation barriers for rural AI/AN beneficiaries to Medicare services by AI/AN Medicare beneficiaries are not available except from the proposed data collection activity.

The information gathered as part of the project—through the use of survey, interview, and focus group instruments—will be used by CMS to identify transportation barriers to Medicare services for AI/AN Medicare beneficiaries. It will provide the first ever complete evaluation of transportation barriers to health care for this population.

The information collection request has been revised since the publication of the 60-day **Federal Register** notice. Several questions were added in response to public comments. In addition to new questions, several clarifying edits were made as well. *Form Number:* CMS–10399 (OMB # 0938–NEW); *Frequency:* Occasionally; *Affected Public:* Individuals and Households, Private Sector; *Number of Respondents:* 3,418; *Total Annual Responses:* 3,418; *Total Annual Hours:* 2,544. (For policy questions regarding this collection contact Roger Goodacre at 410–786–3209. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on May 18, 2012.

OMB, Office of Information and Regulatory Affairs,
Attention: CMS Desk Officer,
Fax Number: (202) 395–6974,
Email: *OIRA_submission@omb.eop.gov*.

Dated: April 12, 2012.

Martique Jones,

Director, Regulations Development Group, Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–9259 Filed 4–17–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: National Youth in Transition Database and Youth Outcome Survey.

OMB No.: 0970–0340.

Description: The Foster Care Independence Act of 1999 (42 U.S.C. 1305 *et seq.*) as amended by Public Law 106–169 requires State child welfare agencies to collect and report to the Administration on Children and Families (ACF) data on the characteristics of youth receiving independent living services and information regarding their outcomes. The regulation implementing the National Youth in Transition Database, listed in 45 CFR 1356.80, contains standard data collection and reporting requirements for States to meet the law's requirements. ACF will use the information collected under the regulation to track independent living services, assess the collective outcomes of youth, and potentially to evaluate State performance with regard to those outcomes consistent with the law's mandate.

Respondents: State agencies that administer the John H. Chafee Foster Care Independence Program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth Outcome Survey	15,334	1	0.50	7,667
Data File	52	2	1,201	124,904

Estimated Total Annual Burden Hours: 132,571.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–9337 Filed 4–17–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0324]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry, FDA Staff, and Foreign Governments: Fiscal Year 2012 Medical Device User Fee Small Business Qualification and Certification

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 Form FDA 3602 and Form FDA 3602A, which will allow domestic and foreign applicants to certify that they qualify as a ''small business'' and pay certain medical device user fees at reduced rates.

DATES: Submit either electronic or written comments on the collection of information by June 18, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, 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.

Guidance for Industry, FDA Staff, and Foreign Governments: Fiscal Year 2012 Medical Device User Fee Small Business Qualification and Certification—(OMB Control Number 0910–0508)—Extension

Section 101 of the Medical Device User Fee and Modernization Act (MDUFMA) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to provide for user fees for certain medical device applications. FDA

published a **Federal Register** notice on August 1, 2011 (76 FR 45826), announcing fees for fiscal year (FY) 2012. To avoid harming small businesses, MDUFMA provides for reduced or waived fees for applicants who qualify as a ''small business.'' This means there are two levels of fees, a standard fee and a reduced or waived small business fee. You can qualify for a small business fee discount under MDUFMA if you reported gross receipts or sales of no more than $100 million on your Federal income tax return for the most recent tax year. If you have any affiliates, partners, or parent firms, you must add their gross receipts or sales to yours, and the total must be no more than $100 million. If your gross receipts or sales are no more than $30 million, including all of your affiliates, partners, and parent firms, you will also qualify for a waiver of the fee for your first (ever) premarket application (product development protocol, biologics licensing application, or premarket report). An applicant must pay the full standard fee unless it provides evidence demonstrating to FDA that it meets the ''small business'' criteria (Form FDA 3602, ''FY 2012 MDUFMA Small Business Qualification Certification—For A Business Headquartered in the United States''). The evidence required by MDUFMA is a copy of the most recent Federal income tax return of the applicant, and any affiliate, partner, or parent firm. FDA will review these materials and decide whether an applicant is a ''small business'' within the meaning of MDUFMA.

The 2007 Amendments provide an alternative way for a foreign business to qualify as a small business eligible to pay a significantly lower fee when a medical device user fee must be paid (Form FDA 3602A, ''FY 2012 MDUFMA Foreign Small Business Qualification Certification—For a Business Headquartered Outside the United States''). Before passage of the 2007 Amendments, the only way a business could qualify as a small business was to submit a Federal (U.S.) income tax return showing its gross receipts or sales that did not exceed a statutory threshold, currently, $100 million. If a business could not provide a Federal income tax return, it did not qualify as a small business and had to pay the standard (full) fee. Because many foreign businesses have not, and cannot, file a Federal (U.S.) income tax return, this requirement has effectively prevented those businesses from qualifying for the small business fee rates. Thus, foreign governments, including the European Union, have objected. In lieu of a Federal income tax return, the 2007 Amendments will allow a foreign business to qualify as a small business by submitting a certification from its national taxing authority, the foreign equivalent of our Internal Revenue Service. This certification, referred to as a ''National Taxing Authority Certification,'' must: Be in English; be from the national taxing authority of the country in which the business is headquartered; provide the business' gross receipts or sales for the most recent year, in both the local currency and in U.S. dollars, and the exchange rate used in converting local currency to U.S. dollars; provide the dates during which the reported receipts or sales were collected; and bear the official seal of the national taxing authority.

Both Forms FDA 3602 and FDA 3602A are available in the guidance document, ''Guidance for Industry, Food and Drug Administration Staff, and Foreign Governments: FY 2012 Medical Device User Fee Small Business Qualification and Certification,'' available on the Internet at: *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/UCM267051.pdf.* This guidance describes the criteria FDA will use to decide whether an entity qualifies as a MDUFMA small business and will help prospective applicants understand what they need to do to meet the small business criteria for FY 2012.

The Form FDA 3602 burden is based on the number of applications received in the last 3 years. FDA believes most entities that submit Form FDA 3602A will not have any affiliates, and very few will have more than three or four affiliates. Based on our experience with Form FDA 3602A, FDA believes each business will require 1 hour to complete the form.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
3602	4,200	1	4,200	1	4,200
3602A	900	1	900	1	900
Total					5,100

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

Dated: April 10, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–9241 Filed 4–17–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2005–E–0310 (previously FDA Docket No. 2005E–0245)]

Determination of Regulatory Review Period for Purposes of Patent Extension; KEPIVANCE; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 2, 2007 (72 FR 15699). The document concerned FDA's determination of the regulatory review period for KEPIVANCE. The document cited an incorrect statute under which the KEPIVANCE biologics license application was submitted. This document corrects the citation.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration,

10903 New Hampshire Ave., Bldg. 51, Rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: In FR Doc. 2007–15699 on page 15700 in the **Federal Register** of Monday, April 2, 2007, the following correction is made:

1. On page 15700, in the first column, in the first line, ''505(b) of the act'' is corrected to read ''351 of the Public Health Service Act (42 U.S.C. 262).''

Dated: February 28, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–9325 Filed 4–17–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–P–0888]

Determination That FUNDUSCEIN-25 (fluorescein sodium injection), 25%, and AK-FLUOR (fluorescein sodium injection), 25%, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that FUNDUSCEIN-25 (fluorescein sodium injection), 25%, and AK-FLUOR (fluorescein sodium injection), 25%, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for fluorescein sodium injection, 25%, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Jane Inglese, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 6210, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug ((21 CFR 314.161). FDA may not approve an ANDA that does not refer to a listed drug.

FUNDUSCEIN-25 (fluorescein sodium injection), 25%, is the subject of NDA 17-869, held by Novartis Pharmaceuticals Corp., and initially approved on November 10, 1976. FUNDUSCEIN-25 is indicated for use in diagnostic fluorescein angiography or angioscopy of the retina and iris vasculature. AK-FLUOR (fluorescein sodium injection), 25%, is the subject of NDA 22-186, held by Akorn Inc., and initially approved on August 8, 2008. AK-FLUOR also is indicated for use in diagnostic fluorescein angiography or angioscopy of the retina and iris vasculature.

FUNDUSCEIN-25 (fluorescein sodium injection), 25%, and AK-FLUOR (fluorescein sodium injection), 25%, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Foley & Lardner LLP submitted a citizen petition dated December 7, 2011 (Docket No. FDA–2011–P–0888), under 21 CFR 10.30, requesting that the Agency determine whether FUNDUSCEIN-25 (fluorescein sodium injection), 25%, was withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not address AK-FLUOR (fluorescein sodium injection), 25%, that product has also been discontinued. On our own initiative, we have therefore also determined whether AK-FLUOR was withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records, and based on the information we have at this time, FDA has determined under § 314.161 that FUNDUSCEIN-25 (fluorescein sodium injection), 25%, and AK-FLUOR (fluorescein sodium injection), 25%, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that FUNDUSCEIN-25 (fluorescein sodium injection), 25%, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of FUNDUSCEIN-25 (fluorescein sodium injection), 25%, and AK-FLUOR (fluorescein sodium injection), 25%, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that FUNDUSCEIN-25 (fluorescein sodium injection), 25%, and AK-FLUOR (fluorescein sodium injection), 25%, were not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list FUNDUSCEIN-25 (fluorescein sodium injection), 25%, and AK-FLUOR (fluorescein sodium injection), 25%, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to FUNDUSCEIN-25 (fluorescein sodium injection), 25%, or AK-FLUOR (fluorescein sodium injection), 25%, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: April 11, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–9292 Filed 4–17–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0017; OMB No. 1660–0059]

Agency Information Collection Activities: Proposed Collection; Comment Request, National Flood Insurance Program Call Center and Agent Referral Enrollment Form

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning this information collection that allows the National Flood Insurance Program (NFIP) to facilitate the availability of flood insurance to those who have a need to purchase such. The NFIP will collect information from insurance agents who will offer the ability to purchase flood insurance, as well as from those interested in purchasing the insurance policies, so as to offer referral information on how the coverage may be obtained. If the information collection were not performed, the ability to offer respondents the resources available by the NFIP would be adversely affected.

DATES: Comments must be submitted on or before June 18, 2012.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at www.regulations.gov under Docket ID FEMA–2012–0017. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Regulatory Affairs Division, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *Email.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2012–0017 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Carolyn Goss, Program Analyst, Federal Insurance and Mitigation Administration, at (202) 212–4728 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA administers the National Flood Insurance Program (NFIP) in response to losses due to floods. The Flood Disaster Protection Act of 1973, Congressional Findings and Declaration of Purpose, Section 2(a)(6) finds that it is in the public interest for persons already living in flood prone areas to have both an opportunity to purchase flood insurance and access to more adequate limits of coverage in order to be indemnified for their losses in the event of future flood disasters. This collection will allow for consumers to be educated about flood insurance coverage and to assist them in obtaining such coverage.

Collection of Information

Title: National Flood Insurance Program Call Center and Agent Referral Enrollment Form.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0059.

Form Titles and Numbers: FEMA Form 517–0–1, National Flood Insurance Program Agent Site Registration and FEMA Form 512–0–1, National Flood Insurance Program Agent Referral Questionnaire.

Abstract: The information collection serves two purposes: (1) It allows the NFIP to service requests for flood insurance information or agent referral services from potential purchasers through calls to the toll-free number or by visiting the Web site, and (2) it allows insurance agents to enroll in the Agent Referral Program and Agent Co-Op Program. If the request includes an insurance agent referral, the name and business address of insurance agents in the caller's geographic area who are enrolled in the referral service are provided.

Affected Public: Individuals or Households; Business or other for-profit; Not-for-profit institutions.

Estimated Number of Respondents: 56,645.

Frequency of Response: Annually.

Estimated Hour Burden per Respondent: FEMA Form 512–0–1, .05 hours, and FEMA Form 517–0–1, .033 hours.

Estimated Total Annual Burden Hours: 2,735 burden hours.

Estimated Cost: There are no record keeping, capital, start-up or maintenance costs associated with this information collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: April 11, 2012.

John G. Jenkins, Jr.,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2012–9343 Filed 4–17–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–290B, Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–290B, Notice of Appeal or Motion.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be

submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on February 7, 2012, at 77 FR 6134, allowing for a 60-day public comment period. USCIS received one comment for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 18, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via email at *uscisfrcomment@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov.* When submitting comments by email, please make sure to add OMB Control Number 1615–0095 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the revision of this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Notice of Appeal or Motion.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–290B. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households, employers, private entities and organizations, businesses, non-profit institutions/organizations, and attorneys. Form I–290B is necessary in order for USCIS to make a determination that the appeal or motion to reopen or reconsider meets the eligibility requirements, and for USCIS to adjudicate the merits of the appeal or motion to reopen or reconsider.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 38,926 responses at 1.5 hours (90 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 58,389 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529, telephone number 202–272–8377.

Dated: April 12, 2012.

Laura Dawkins,

Acting Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–9349 Filed 4–17–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–881; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100, NACARA).

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 18, 2012.

During this 60 day period, USCIS, will be evaluating whether to revise the Form I–881. Should USCIS decide to revise Form I–881 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–881.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via email at *uscisfrcomment@dhs.gov.* When submitting comments by email, please make sure to add OMB Control No. 1615–0072 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the extension of the Form I–881. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case before USCIS, please check ''My Case Status'' online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833). If you are in immigration proceedings before the Department of Justice (DOJ), Executive

Office for Immigration Review (EOIR), please check directly with the Immigration Court with jurisdiction over your case, or you may call the EOIR Case Status System at 1–800–898–7180 or 240–314–1500 (a toll call).

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100, NACARA).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–881; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–881 is used by individuals to apply for suspension of deportation or special rule cancellation of removal with either USCIS or EOIR. Form I–881 is necessary to determine whether certain individuals from Guatemala, El Salvador, and former Soviet bloc countries are eligible for suspension of deportation or special rule cancellation of removal.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6,272 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75,264 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–8377.

Dated: April 12, 2012.

Laura Dawkins,

Acting Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–9352 Filed 4–17–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–N–13]

Proposed Information Collection; Comment Request: FHA Insured Title I Property Improvement and Manufactured Home Loan Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: June 18, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Arlene Nunes, Director, Home Mortgage Insurance Division, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Title I Property Improvement and Manufactured Home Loan Programs.

OMB Control Number, if applicable: 2502–0328.

Description of the need for the information and proposed use: Title I loans are made by private-sector lenders and insured by HUD against loss from defaults. HUD uses this information to evaluate individual lenders on their overall program performance. The information collected is used to determine insurance eligibility and claim eligibility.

Agency form numbers, if applicable: HUD–637, 646, 27030, 55013, 55014, 56001, 56001–MH, 56002, 56002–MH, & SF 3881.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 22,864. The number of respondents is 12,906, the number of responses is 47,440 the frequency of response is on occasion, and the burden hour per response is 14.53.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 12, 2012.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing-Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2012–9355 Filed 4–17–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–N–11]

Proposed Information Collection; Comment Request: Home Equity Conversion Mortgage Counseling Client Survey

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: June 18, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Betsy Cromwell, Office of Single Family Program Support Division, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–4465 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Home Equity Conversion Mortgage Counseling Client Survey.

OMB Control Number, if applicable: 2502–0585.

Description of the need for the information and proposed use: As a condition of eligibility to receive a Home Equity Conversion Mortgage (HECM), consumers must participate in reverse mortgage counseling. As part of HUD's evaluation of its HECM counseling program, performance reviews are conducted at the HUD-approved counseling agencies by HUD staff. HUD staff mails or emails, when an email address is available, the HECM client survey to consumers who have recently received counseling through the agency. This survey is completed by the consumer and mailed or emailed back to HUD. It provides valuable feedback to HUD regarding customer service and counseling quality provided by the HECM counseling agency being reviewed. HUD uses this information to evaluate the counseling agency and, further, to make any policy or procedural changes as necessary.

Agency form numbers, if applicable: HUD–92911.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 50, the number of respondents is 300 generating approximately 300 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 10 minutes to 20 minutes.

Status of the proposed information collection: This is an extension of a previously approved information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 12, 2012.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing-Acting General Deputy, Federal Housing Commissioner.

[FR Doc. 2012–9359 Filed 4–17–12; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2012–N088; FXES11130300000F3–123–FF03E00000]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before May 18, 2012.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Lisa Mandell, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Mandell, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES**.

Permit Applications

Permit Application Number: TE71464A.

Applicant: Bishop Hill Energy LLC, Chicago, IL.

The applicant requests a permit to take (salvage) the endangered Indiana

bat (*Myotis sodalis*) at the Bishop Hill Wind Energy Project, Henry County, IL. The applicant proposes a maximum take of two Indiana bats during proposed research to determine operating methods to avoid long-term take of the species at the facility.

Under the research proposal, Bishop Hill Energy would evaluate bat mortality and take avoidance at the facility to benefit listed and unlisted bat species. The primary goal of the research is to evaluate and devise biologically based operational protocols for turbines at the Henry County facility to successfully avoid take of listed bat species.

In addition, information generated by the proposed research could be used to inform operational protocols at other operating wind energy projects within the range of Indiana bats, thereby enhancing the propagation and survival of the listed species. The proposed study is designed to research (1) effective methods to avoid mortality of listed bats through curtailment of turbines and (2) the relationship between temperature and risk of bat mortality. The applicant requests a permit term of two years.

The environmental impacts of the proposed study have been evaluated in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 et seq.). The USFWS has prepared an Environmental Assessment (EA) to conduct this evaluation prior to making its decision on permit issuance. The EA is available for public review concurrent with the permit application.

Permit Application Number: TE71680A.
Applicant: Megan Caylor, Indianapolis, IN.

The applicant requests a permit to take (capture and release) Indiana bats and Gray bats (*Myotis grisescens*) throughout the range of the species. The applicant requests authority to conduct activities aimed at enhancement of survival of the species in the wild in Alabama, Arkansas, Connecticut, Florida, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Missouri, Mississippi, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, DC, and West Virginia.

Permit Application Number: TE15027A.
Applicant: Stantec Consulting, Columbus, OH.

The applicant requests a renewal of their permit, with an amendment, to take the following species: Indiana bats, gray bats, Hine's emerald dragonfly (*Somatochlora hineana*), American burying beetle (*Nicrophorus americanus*), and Mitchell's satyr butterfly (*Neonympha mitchellii mitchellii*) for the purpose of enhancement of the survival of the species in the wild. Proposed activities may occur within the following States: Illinois, Indiana, Michigan, Missouri, New Jersey, Ohio, Pennsylvania, and Wisconsin.

Permit Application Number: TE71718A.
Applicant: Steffen J. Bradley, Finneytown, OH.

The applicant requests a permit to take Indiana bats and gray bats within Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, and Wisconsin. Proposed activities are for the recovery of the species and enhancement of survival of the species in the wild.

Permit Application Number: TE71720A.
Applicant: Forest Preserve District of Will County, Plainfield, IL.

The applicant requests a permit to take (capture and release) Indiana bats and gray bats within the Forest Preserve District, Will County, IL, for the purpose of recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE71730A.
Applicant: Missouri Department of Conservation, Lost Valley Hatchery, Warsaw, MO.

The applicant requests a permit to take (capture and hold; propagate and release) the Topeka shiner (*Notropis topeka*) within the State of Missouri. Propagation activities will be conducted in accordance with the 10-year Strategic Plan for Recovery of the Topeka Shiner in Missouri. Proposed activities are for the enhancement of propagation and survival of the species in the wild.

Permit Application Number: TE00622A.
Applicant: Upper Peninsula Land Conservancy, Marquette, MI.

The applicant requests a permit renewal to take Piping Plover (*Charadrius melodus*) within Michigan's Upper Peninsula. Proposed activities involve protection of nests and adults, collection, and participating in captive rearing/release in accordance with USFWS protocols. Activities proposed are for the recovery of the species in the wild.

Permit Application Number: TE06846A.
Applicant: Smithsonian Migratory Bird Center, Washington, DC

The applicant requests a permit renewal to take (capture, band/tag, and release) the Kirtland's warbler (*Dendroica kirtlandii*) throughout Michigan for scientific research aimed at recovery of the species.

Permit Application Number: TE71737A.
Applicant: Roger A. Klocek, Plainfield, IL.

The applicant requests a permit to take (capture and release) Higgins' eye pearlymussel (*Lampsilis higginsii*), spectaclecase mussel (*Cumberlandia monodonta*), and sheepnose mussel (*Plethobasus cyphus*) within the Mississippi River in Iowa. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE71819A.
Applicant: The University of Michigan, Dearborn, MI.

The applicant requests a permit to take Karner blue butterfly (*Lycaeides melissa samuelis*) within Michigan, Ohio, and Indiana. Proposed take involves capture and handling, nonlethal collection of tissue, and release. Activities are proposed to enhance the recovery of the species through research into genetic diversity.

Permit Application Number: TE08603A.
Applicant: Michelle Malcosky, Hudson, OH.

The applicant requests a permit renewal to take (capture and release) Indiana bats throughout the species' range for the purpose of enhancement of survival of the species in the wild.

Permit Application Number: TE71821A.
Applicant: David T. Zanatta, Central Michigan University, Mount Pleasant, MI.

The applicant requests a permit to take (capture and release; temporary holding) the following mussel species: Snuffbox (*Epioblasma triquetra*), rayed bean (*Villosa fabalis*), Clubshell (*Pleurobema clava*), and Northern riffleshell (*Epioblasma torulosa rangiana*). Proposed activities may occur within Michigan and Wisconsin for the purpose of research and enhancement of propagation and survival of the species in the wild.

Permit Application Number: TE71827A.
Applicant: Benjamin T. Hale, Jacksonville, IL.

The applicant requests a permit to take (capture and release) Indiana bats, gray bats, Ozark big-eared bats (*Corynorhinus townsendii ingens*), and Virginia big-eared bats (*Corynorhinus townsendii virginianus*) throughout the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE206778.

Applicant: U.S. Fish and Wildlife Service, Ecological Services Field Office, Twin Cities, MN.

The applicant requests a permit amendment to add snuffbox, spectaclecase, and sheepnose mussels to existing Fish and Wildlife Permit Number TE206778. Proposed activities would occur within Minnesota and Wisconsin for the enhancement of propagation and survival of the species in the wild.

Permit Application Number: TE71834A.

Applicant: Robert J. Welch, Waupaca Biological Field Station, Waupaca, WI.

The applicant requests a permit to take (capture and release) snuffbox mussels within Wisconsin for the enhancement of survival of the species in the wild.

Permit Application Number: TE02360A.

Applicant: Sydney Morgan, Charleston, WV.

The applicant requests a permit renewal to take (capture and release) Indiana bats, gray bats, and Virginia big-eared bats throughout the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. 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: April 12, 2012.

Sean Marsan,

Acting Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 2012–9391 Filed 4–17–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD06000 L51010000.FX0000 LVRWB09B3350 CACA49491]

Notice of Availability of the Draft enXco Desert Harvest Solar Farm Project Environmental Impact Statement, Riverside County, CA and the Draft California Desert Conservation Area Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (Draft EIS) for the enXco Desert Harvest Solar Farm Project and draft California Desert Conservation Area (CDCA) Plan Amendment, and by this notice is announcing the opening of the comment period on the Draft EIS and Draft CDCA Plan Amendment.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft EIS and Draft CDCA Plan Amendment within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the enXco Desert Harvest Solar Farm Project and CDCA Plan Amendment by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/palmsprings/Solar_Projects/Desert_Harvest_Solar_Project.html.*
- *Email: cadesertharvest@blm.gov.*
- *Fax:* (951) 697–5299.
- *Mail:* Lynnette Elser, BLM, California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553.

Copies of the enXco Desert Harvest Solar Farm Project Draft EIS and Draft CDCA Plan Amendment are available in the BLM California Desert District Office at the above address and at the BLM Palm Springs Field Office, 1201 Bird Center Drive Palm Springs, CA 92262.

FOR FURTHER INFORMATION CONTACT: Lynnette Elser, Project Manager; telephone (951) 697–5233; address BLM, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553; email *cadesertharvest@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for the above referred individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant, enXco, has requested a right-of-way (ROW) authorization to construct, operate, maintain, and decommission a solar photovoltaic (PV) generating facility with a proposed output of 150 megawatts (mw) and a facility footprint of approximately 1,280 acres. The proposed project would be located on BLM-administered lands in Riverside County, California, about 6 miles north of the rural community of Desert Center, California. The overall site layout and generalized land uses could include a substation, an administration building, operations and maintenance facilities, a transmission line, and temporary construction lay down areas. The project's 230-kilovolt (kV) generation interconnection transmission line would either be located on the previously approved First Solar Desert Sunlight project's 230-kV gen-tie (as a shared facility), or would be located on a combination of private and BLM-administered lands and would utilize a planned 230- to 500-kV substation (referred to as the Red Bluff Substation). The Red Bluff Substation would connect the project to Southern California Edison regional transmission grid. If the project is approved, construction would begin in late 2013 and would take 9–12 months to complete.

The BLM's purpose and need for the Desert Harvest Project is to respond to enXco's application under Title V of FLPMA (43 U.S.C. 1761) for a ROW grant to construct, operate, and decommission a solar PV facility on public lands in compliance with FLPMA, NEPA, BLM ROW and land use planning regulations, and other applicable laws and regulations. The BLM will decide whether to approve, approve with modification, or deny a ROW to enXco for the proposed Desert Harvest project. Concurrently with its action on the ROW request, the BLM is also proposing to amend the CDCA Plan to make the project area (or portions of the project area) either available or unavailable for future solar development. The CDCA Plan (1980, as

amended), while recognizing the potential compatibility of solar generation facilities with other uses on public lands, requires that all sites proposed for power generation or transmission not already identified in the CDCA Plan be considered through the plan amendment process. If the BLM decides to grant a ROW, the BLM would amend the CDCA Plan as required based on guidance in the BLM Land Use Planning Handbook (H–1601–1).

The Draft EIS Analyzes 12 Alternatives

Four no action/no development alternatives (Alternative 1: No Action (No Plan Amendment), Alternative 2: No Project Alternative (with Plan Amendment to Find the Site Suitable for Solar), Alternative 3: No Project Alternative (with Plan Amendment to Find the Site Unsuitable for Solar), Alternative A: No Gen-Tie),

Four generation plan development alternatives (Alternative 4: Proposed Solar Project, Alternative 5: Solar Project Excluding WHMA, Alternative 6: Reduced Footprint Solar Project Alternative 7: High-Profile Reduced Footprint Solar Project), and

Four transmission line alternatives (Alternative B: Proposed Gen-Tie (Shared Towers), Alternative C: Separate Transmission Towers within Same ROW, Alternative D: Cross-Valley Alignment, Alternative E: New Cross-Valley Alignment). The BLM has identified Alternative 7 as the preferred alternative for the generation plant, and Alternative B as the preferred alternative for the transmission line.

The Draft EIS analyzes the direct, indirect, and cumulative impacts of the Proposed Action and alternatives to the affected resources identified by the BLM and the public during project scoping.

The BLM published a Notice of Intent (NOI) to prepare an EIS on September 15, 2011, in the **Federal Register** Volume 76, Number 179. Publication of the NOI began a 30-day scoping period, which ended on October 17, 2011. The BLM provided a Web site with project information that also described the various methods of providing public comment on the project, including an email address for the BLM to receive scoping comments electronically.

Notifications for public scoping meetings were posted on the BLM's Web site. Additionally, notices were sent to all landowners within 300 feet of the project boundary and to other interested parties during the week of September 19, 2011.

Public Scoping Meetings were held on October 3, 2011, at the University of Riverside Palm Desert Graduate Center and at the Lake Tamarisk Clubhouse. An additional public scoping meeting was held on October 6, 2011, at the Joshua Tree Community Center. Attendees were documented through a voluntary sign-in sheet, and included 6 attendees at the University of Riverside Palm Desert Graduate Center along with KMIR TV; 30 attendees at the Lake Tamarisk Clubhouse; and 7 attendees at the Joshua Tree Community Center. A court reporter documented the questions and public comments made at the three scoping meetings.

Attendees included residents from Desert Center and Lake Tamarisk, federal and state agency representatives, nearby business owners, Tribes, Chamber of Commerce members, and an environmental group representative.

Twelve comment letters were received within the scoping period. Comments received at the public meetings and through the submitted letters identified the following issues and concerns to be considered when developing the EIS: the BLM's purpose and need, monitoring, decommissioning, public participation, biological resources, climate change, air resources, fire and fuels management, lands and realty, recreation, social and economic resources, environmental justice, water resources, solid and hazardous wastes, visual resources, cumulative impacts, and alternatives development.

The BLM considered these comments in developing the Draft EIS and Draft CDCA Plan Amendment.

The BLM used an updated inventory of wilderness characteristics to determine that none of the project area has wilderness characteristics. This information was used in the preparation of the Draft EIS and Draft CDCA Plan Amendment.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 506.10, and 43 CFR 1610.2

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2012–9338 Filed 4–13–12; 4:15 pm]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK920000–L14100000–BJ0000]

Notice of Filing of Plats of Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: The plat and field notes representing the dependent resurvey of U.S. Survey No. 4385, Alaska, has been accepted by the Chief Cadastral Surveyor for Alaska. This notice provides an opportunity for the public to comment on the proposed action. This survey is located along Mentasta Lake Road, approximately 1½ miles northeasterly of the village of Mentasta, within Tps. 13 and 14 N., R. 3 E., Copper River Meridian, Alaska.

DATES: The plat of survey described above is scheduled to be officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska, May 18, 2012. Protests of the survey must be filed before May 18, 2012 to be considered.

ADDRESSES: Bureau of Land Management, Alaska State Office; 222 W. 7th Ave., Stop 13; Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Michael H. Schoder, Chief Cadastral Surveyor, Division of Cadastral Survey, BLM–Alaska State Office; 222 W. 7th Ave., Stop 13; Anchorage, AK 99513–7599; Tel: 907–271–5481; fax: 907–271–4549; email: *mschoder@blm.gov*.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The survey plat and field notes will be available for inspection in the Public Information Center, Alaska State Office, Bureau of Land Management, 222 West 7th Avenue, Anchorage, Alaska 99513–7599; telephone (907) 271–5960. Copies

may be obtained from this office for a minimum recovery fee.

If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed.

A person or party who wishes to protest against this survey must file a written response with the Alaska State Director, Bureau of Land Management, 222 West 7th Avenue, Anchorage, Alaska 99513–7599, stating that they wish to protest.

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.

A statement of reasons for a protest may be filed with the notice of protest to the State Director; the statement of reasons must be filed with the State Director within thirty days after the protest is filed.

Authority: 43 U.S.C. 3; 53.

Dated: April 11, 2012

Michael H. Schoder,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2012–9293 Filed 4–17–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Proposed Leasehold Surrender Interest Guide

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) invites public comments on its proposed Leasehold Surrender Interest (LSI) Guide. The proposed LSI Guide discusses methodologies for estimating the LSI value of capital improvements constructed, installed or acquired by a concessioner pursuant to the terms of a NPS concession contract.

DATES: Public comments will be accepted on or before May 18, 2012.

ADDRESSES: Copies of the proposed LSI Guide are available for review or download at *http://concessions.nps.gov/index.htm*. Send comments to Ms. Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street NW., 11th Floor, Washington, DC 20005 or via email at *jo_pendry@nps.gov* or via fax at 202/371–2090.

FOR FURTHER INFORMATION CONTACT: Deborah Harvey, Asset Management Branch Chief, 202–513–7150.

Before including your address, phone number, email address, or other 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.

SUPPLEMENTARY INFORMATION: Pursuant to the NPS Concessions Management Improvement Act of 1998 (Pub. L. 105–391; 36 CFR part 51), the proposed LSI Guide provides information regarding LSI terms and concepts and discusses the various types of capital improvements eligible for LSI, including a table listing types of equipment and materials used in real property improvements that may or may not be classified as fixtures. The proposed LSI Guide also includes discussion of how to estimate LSI values, including the effects of inflation and depreciation. The proposed LSI Guide is not intended to describe all LSI requirements or circumstances. The proposed LSI Guide does not adopt requirements or policy for the National Park Service or National Park Service concessioners.

Dated: March 7, 2012.

Jo A. Pendry,

Chief, Commercial Services Program.

[FR Doc. 2012–9264 Filed 4–17–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–RTCA–0323–9915; 5041–STC]

Wekiva River System Advisory Management Committee Meetings (FY2012)

AGENCY: National Park Service, Interior.

ACTION: Notice of upcoming scheduled meetings.

SUMMARY: This notice announces a schedule of upcoming meetings for the Wekiva River System Advisory Management Committee.

DATES: The meetings are scheduled for: May 8, 2012 (Dining Hall), August 8, 2012 (Recreation Hall), October 10, 2012 (Recreation Hall), and December 5, 2012 (Recreation Hall).

Time: All scheduled meetings will begin at 3 p.m. and will end by 5 p.m.

ADDRESSES: All scheduled meetings will be held at the Wekiwa Springs State Park, 1800 Wekiwa Circle, Apopka, FL 32712. Call (407) 884–2006 or visit *http://www.floridastateparks.org/wekiwasprings/* for additional information on this facility.

FOR FURTHER INFORMATION CONTACT: Jaime Doubek-Racine, DFO, Wekiva Wild and Scenic River, RTCA Program, Florida Field Office, Southeast Region, 5342 Clark Road, PMB #123, Sarasota, Florida 34233, tel. (941) 685–5912.

SUPPLEMENTARY INFORMATION: The scheduled meetings will be open to the public. Each scheduled meeting will result in decisions and steps that advance the Wekiva River System Advisory Management Committee toward its objective of managing and implementing projects developed from the Comprehensive Management Plan for the Wekiva Wild and Scenic River. Any member of the public may file with the Committee a written statement concerning any issues relating to the development of the Comprehensive Management Plan for the Wekiva Wild and Scenic River. Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. 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. The statement should be addressed to the Wekiva River System Advisory Management Committee, National Park Service, 5342 Clark Road PMB #123, Sarasota, Florida 34233.

The Wekiva River System Advisory Management Committee was established by Public Law 106–299 to assist in the development of the comprehensive management plan for the Wekiva River System and provide advice to the Secretary in carrying out management responsibilities of the Secretary under the Wild and Scenic Rivers Act (16 U.S.C. 1274).

Efforts have been made locally to ensure that the interested public is aware of the meeting dates.

Dated: April 6, 2012.

Jaime Doubek-Racine,

Designated Federal Officer, Wekiva Wild and Scenic River, Southeast Region.

[FR Doc. 2012–9279 Filed 4–17–12; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on April 12, 2012, a proposed Consent Decree (''Decree'') in *United States* v. *South East Metals, Inc.,* Civil Action No. 1:11–cv–00751, was lodged with the United States District Court for the Northern District of Ohio.

In this action the United States, on behalf of the U.S. Environmental Protection Agency (''U.S. EPA''), sought penalties and injunctive relief under the Clean Air Act (''CAA'') against South East Metals, Inc., d/b/a Southeast Metals (''Defendant'') relating to Defendant's Bedford Heights, Ohio facility (''Facility''). The Complaint alleged that Defendant violated Section 608(b)(1) of the CAA, 42 U.S.C. 7671g(b)(1) (National Recycling and Emission Reduction Program), and the regulations promulgated thereunder, 40 CFR part 82, Subpart F, by failing to follow the requirement to recover or verify recovery of refrigerant from appliances it accepts for disposal. The Complaint also alleges that Defendant failed to respond to an information request issued pursuant to Section 114 of the CAA, 42 U.S.C. 9614. The Consent Decree provides for a civil penalty of $15,000 based upon ability to pay. The Decree also requires Defendant to implement the following measures at the Facility: (1) Purchase equipment to recover refrigerant or contract for such services and provide for such recovery at no additional cost; (2) no longer accept small appliances, motor vehicle air conditioners (''MVACs''), or MVAC-like appliances with cut lines unless the supplier can provide appropriate written verification (e.g., that all refrigerant that had not leaked previously was properly evacuated); (3) require its suppliers to use the verification statement provided in Appendix A that contains the information required by the regulations, unless it has an existing written agreement with that supplier regarding verification; and (4) keep a refrigerant recovery log to document details regarding refrigerant that is recovered by Defendant in the form provided in Appendix B.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, 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* v. *South East Metals, Inc.,* D. J. Ref. 90–5–2–1–09775. The Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 801 West Superior Avenue, Suite 400, Cleveland, OH 44113 (contact Assistant U.S. Attorney Steven Paffilas (216) 622–3698) and at U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the 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 $7.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–9268 Filed 4–17–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on April 10, 2012 a proposed Stipulation and Settlement Agreement was lodged with the United States Bankruptcy Court for the District of Delaware in *In re W.R. Grace & Co.,* Case No. 01–01139 (JFK). The proposed Settlement Agreement would resolve the United States' claim in W.R. Grace & Co.'s bankruptcy proceeding for environmental response costs at the Big Tex Site in San Antonio, Texas, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607. Under the terms of the proposed Settlement Agreement, W.R. Grace & Co. will grant the United States an Allowed General Unsecured Claim of $2,200,000 to resolve the Big Tex Site CERCLA claim.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re W.R. Grace & Co.,* Case No. 01–01139 (JFK), and D.J. Ref. No. 90–11–2–07106/5.

During the public comment period, the settlement agreement may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the settlement agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.enrd@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $3.50 ($.25 per page) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–9291 Filed 4–17–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Workforce Investment Streamlined Performance Reporting System

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Workforce Investment Streamlined Performance Reporting System,'' to the Office of Management and Budget (OMB) for approval in accordance with the

Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

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

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Workforce Investment Streamlined Performance Reporting (WISPR) System features a set of aggregate quarterly reports for capturing services to employer and job seeker customers, including a special aggregate report on services to the nation's eligible veterans and transitioning service members. A standardized set of participant data that includes information on demographics, types of services received, and performance outcomes based on a set of common measures defined consistently across programs is a key component of this reporting system. The WISPR System also incorporates provisions to ensure the integrity of reported data and resolve data collection and reliability issues raised by the DOL Office of the Inspector General and the Government Accountability Office regarding the Department's ability accurately to evaluate program performance.

A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The OMB Control Number for the WISPR System information collection is 1205–0469. For additional information, see the related notice published in the **Federal Register** on September 2, 2011 (76 FR 54792).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0469. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Workforce Investment Streamlined Performance Reporting System.

OMB Control Number: 1205–0469.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 54.

Total Estimated Number of Responses: 216.

Total Estimated Annual Burden Hours: 968,438.

Total Estimated Annual Other Costs Burden: $0.

Dated: April 12, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–9242 Filed 4–17–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labor Market Information Cooperative Agreement

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, ''Labor Market Information Cooperative Agreement,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

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

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The Labor Market Information Cooperative Agreement includes all information needed by the State Workforce Agencies to apply for funds to assist them in operating one or more of the five Labor Market Information programs operated by the Bureau of Labor Statistics, and, once awarded, report on the status of obligation and expenditure of funds, as well as close out the Cooperative Agreement.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is

approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0079. The current OMB approval is scheduled to expire on May 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements only take effect upon OMB approval. For additional information, see the related notice published in the **Federal Register** on November 16, 2011 (76 FR 71075).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0079. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Labor Market Information Cooperative Agreement.

OMB Control Number: 1220–0079.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 54.

Total Estimated Number of Responses: 1,024.

Total Estimated Annual Burden Hours: 928.

Total Estimated Annual Other Costs Burden: $0.

Dated: April 12, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–9332 Filed 4–17–12; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; YouthBuild Reporting System

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''YouthBuild Reporting System,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

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

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: YouthBuild grantees collect and report selected standardized information pertaining to customers in YouthBuild programs for the purposes of general program oversight, evaluation, and performance assessment. The ETA provides all grantees with a YouthBuild management information system to use for collecting participant data and for preparing and submitting the required quarterly reports. This is a request to extend the reporting and recordkeeping requirements of the YouthBuild program and to add an additional section to an existing form to enable the collection of information on the number of affordable housing units built or renovated by YouthBuild participants.

The YouthBuild Reporting System is an information collection subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0464. The current OMB approval is scheduled to expire on April 30, 2014. New information collection requirements would take effect only upon OMB approval of the ICR.

For additional information, see the related notice published in the **Federal Register** on September 8, 2011 (76 FR 55707).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1205–0464. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: YouthBuild Reporting System.

OMB Control Number: 1205–0464.

Affected Public: Individuals or Households and Private Sector—Not-for-profit institutions.

Total Estimated Number of Respondents: 6,645.

Total Estimated Number of Responses: 14,460.

Total Estimated Annual Burden Hours: 39,179.

Total Estimated Annual Costs Burden: $0.

Dated: April 11, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–9257 Filed 4–17–12; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; O*Net Data Collection Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''O*Net Data Collection Program,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

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

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Occupational Information Network (O*Net) Data Collection Program yields detailed characteristics of occupations and skills for over 800 occupations by obtaining information from job incumbents/occupational specialists on worker and job characteristics to populate the O*Net database. The O*Net database information is used for a wide range of purposes related to career counseling and development, curriculum design, human resources functions and workforce investment efforts. The data collection methodology includes contacting businesses/associations to gain their cooperation, and collecting information from employees of cooperating businesses/associations as well as occupational specialists. While not affecting public burdens, this ICR technically qualifies as a revision under the PRA. The agency has added a questionnaire comment box soliciting respondent feedback on the last page of the Background/Association Questionnaire and removed a question about apprenticeship from the Knowledge Questionnaire. The agency has also made minor editorial changes to cover materials, to be consistent with other DOL information collections.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0421. The current OMB approval is scheduled to expire on May 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 29, 2011 (76 FR 73680).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0421. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: O*Net Data Collection Program.

OMB Control Number: 1205–0421.

Affected Public: Federal Government; Individuals or Households; Private Sector—Businesses or Other For-Profits, Farms, and Not-for-Profit Institutions; State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 25,168.

Total Estimated Number of Responses: 26,287.

Total Estimated Annual Burden Hours: 13,671.

Total Estimated Annual Other Costs Burden: $0.

Dated: April 12, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–9240 Filed 4–17–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bureau of Labor Statistics Occupational Safety and Health Statistics Cooperative Agreement Application Package

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, ''Bureau of Labor Statistics Occupational Safety and Health Statistics Cooperative Agreement Application Package,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

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

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The BLS signs cooperative agreements with States, and political subdivisions thereof, to assist them in developing and administering programs that deal with occupational safety and health statistics and to arrange through these agreements for research to further the objectives of the Occupational Safety and Health Act. The Cooperative Agreement is the vehicle through which State grant agencies are awarded funds. The Cooperative Agreement package includes application instructions and materials, as well as financial reporting, closeout and other administrative requirements. The information collection is being revised to include a Transmittal and Certification Form, Financial Reconciliation Worksheet, and Property Listing.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0149. The current OMB approval is scheduled to expire on July 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements only take effect upon OMB approval. For additional information, see the related notice published in the **Federal Register** on November 16, 2011 (76 FR 71076).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0149. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Bureau of Labor Statistics Occupational Safety and Health Statistics Cooperative Agreement Application Package.

OMB Control Number: 1220–0149.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 54.

Total Estimated Number of Responses: 406.

Total Estimated Annual Burden Hours: 367.

Total Estimated Annual Other Costs Burden: $0.

Dated: April 12, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–9333 Filed 4–17–12; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to Section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub L. 94–283, 2 U.S.C. 441a (c)(2)(B)(i) and (ii)), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967 = 100) increased 356.2 percent from its 1974 annual average of 147.7 to its 2011 annual average of 673.818 and that it increased 27.0 percent from its 2001 annual average of 530.4 to its 2011 annual average of 673.818. Using 1974 as a base (1974 = 100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 356.2 percent from its 1974 annual average of 100 to its 2011 annual average of 456.207. Using 2001 as a base (2001 = 100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers increased 27.0 percent from its 2001 annual average of 100 to its 2011 annual average of 127.040. Using 2006 as a base (2006 = 100), the CPI increased 11.6 percent from its 2006 annual average of 100 to its 2011 annual average of 111.578.

Signed at Washington, DC, on the 12th day of April 2012.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2012–9360 Filed 4–17–12; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to Section 33105(c) of Title 49, United States Code, and the delegation of the Secretary of Transportation's responsibilities under that Act to the Administrator of the Federal Highway Administration (49 CFR, Section 501.2(a)(9)), the Secretary of Labor has certified to the Administrator and published this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967 = 100) increased 116.6 percent from its 1984 annual average of 311.1 to its 2011 annual average of 673.818.

Signed at Washington, DC, on the 12th day of April 2012.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2012–9362 Filed 4–17–12; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Tribal Consultation Policy

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed policy: Request for comments.

SUMMARY: The Department of Labor seeks comments on a proposed tribal consultation policy. This policy would establish standards for improved consultation with federally recognized Indian Tribes to the extent that a conflict does not exist with laws or regulations. It would apply to any Department action that affects federally recognized Indian tribes and would require that the Department's government-to-government consultation involve appropriate Tribal and Departmental officials.

DATES: We will consider all comments received by June 18, 2012.

ADDRESSES: Submit comments and additional materials using any of the following methods.

Electronically: Submit comments electronically through the *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments for docket number: DOL–2012–0002.

Regular Mail, express delivery, hand (courier) delivery or messenger service: Submit comments to Jeremy Bishop, Special Assistant to the Secretary, Office of Public Engagement, U.S. Department of Labor, Room C2313, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Jeremy Bishop, Office of the Secretary, 202–693–6452 or *bishop.jeremy@dol.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor's proposed policy on consultation with tribes is set forth below.

U.S. Department of Labor

Tribal Consultation Policy

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Appendix A—Executive Order 13175

I. Background and Purpose

A. Executive Order 13175 and DOL's Relationship With Indian Tribes

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

The Department of Labor (DOL) has collaborated extensively with American Indians and Alaska Natives (AI/AN) for many years in advancing its mission of fostering job opportunities, improving working conditions, and assuring work-related benefits and rights of workers and retirees in the United States. In recent years, senior DOL officials have conducted many site visits in Indian Country and regularly engage with Indian tribes and their representatives, including the National Congress of American Indians. The Department's collaboration with Indian tribes encompasses a broad range of DOL matters affecting tribes, including joint efforts to improve tribal program management, rulemaking, regulations, policies, waivers and flexibility, grant programs, contracting opportunities, and regulatory guidance.

The Department's Employment and Training Administration (ETA), for example, awards grants to Indian and Native American entities for programs that have become a key part of improving tribal economic self-sufficiency by ensuring that tribal workers have the skills to build and operate new infrastructure and facilities at the tribal community level and facilitate the creation of new business opportunities in Indian Country. ETA's Division of Indian and Native American Programs (DINAP) administers employment and training services grants to tribal communities in ways that are consistent with the traditional cultural values and beliefs of the people they are designed to serve, including youth and at-risk populations facing employment barriers. DINAP works closely with the Native American Employment and Training Council (NAETC), a federal advisory committee comprised of representatives of Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations appointed by the Secretary of Labor. The NAETC provides advice to the Secretary regarding the overall operation and administration of tribal programs authorized under Section 166 of the Workforce Investment Act (Pub. L. 105–220, as amended), as well as the implementation of other DOL tribal programs and services.

The Department's Women's Bureau (WB) has an ongoing relationship with the United Indians of All Tribes Foundation and works with its

Procurement Technical Assistance Center to provide information to Indian women small business owners concerning workforce development trends and DOL contract opportunities. The WB is also part of a network of Indian women organizations that collaborate on finding ways to end domestic violence and abuse. The Department's Office of Federal Contract Compliance Programs (OFCCP) works in concert with the Council for Tribal Employment Rights to increase the employment of AI/ANs by federal contractors and subcontractors through linkages, referrals, training, regular communication, and sharing of information and resources pursuant to federal contractors' obligations.

The Department's Occupational Safety and Health Administration (OSHA) works with Indian tribes by providing compliance assistance and including the tribes in relevant OSHA outreach and awareness campaigns addressing worker safety and health. OSHA is making its contacts with Indian tribes more regular and consistent, and seeks to establish voluntary protection programs, partnerships, and alliances with tribal groups in the interest of promoting job safety in Indian Country. OSHA also makes available workplace safety grants that Indian tribes may qualify for, such as the Susan Harwood Training Grants.

The Department's Mine Safety and Health Administration (MSHA) assists Indian tribes with training programs for miners and has provided annual grant funds to the Navajo Nation to educate miners and mine operators on safe working practices in the mining industry and compliance with applicable MSHA regulations.

These are among many of DOL's ongoing actions to engage with tribes and support the efforts of tribal governments to have sustainable tribal communities and achieve our mutual goals of ensuring fair wages, employee rights, and workplace safety while working to alleviate the high unemployment found on tribal lands. The Department is committed to building on these efforts to engage in regular and meaningful consultation and collaboration with tribal officials on policies and actions that have tribal implications, including the development of this formal tribal consultation policy. Accordingly, this policy has been developed in consultation with Indian tribes and tribal officials as set forth in Executive Order 13175.

Implementation of this tribal consultation policy will facilitate greater consistency across the DOL in carrying out tribal consultations and will improve collaboration with Indian tribes at all levels of Departmental organizations and offices. This policy will also ensure that a reporting structure and process is in place so that all Departmental tribal consultation work will be transparent and accountable. DOL employees having responsibility for the outcomes of consultation and collaborative activities will be better able to assess effectiveness and coordinate their efforts with other related Departmental initiatives. Through these efforts, the Department anticipates an even stronger relationship with Indian tribes and improved program delivery to meet the needs of Indian tribes and communities.

B. Referenced Authorities

This tribal consultation policy document was developed based upon:

1. Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended (25 U.S.C. 450 et seq.).
2. Indian Self-Determination Act Amendments of 1994, Public Law 103–413 (25 U.S.C. 450 et seq.).
3. Native American Programs Act, Public Law 93–644, as amended (42 U.S.C. 2991 et seq.).
4. Presidential Memorandum, Government-to-Government Relations with Native American Tribal Governments, April 29, 1994.
5. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000.
6. Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004.
7. Presidential Memorandum, Tribal Consultation, November 5, 2009.
8. OMB Memorandum M–10–33, Guidance for Implementing E.O. 13175, July 30, 2010.

II. Guiding Principles

A. Government-to-Government Relationship and Tribal Self-Determination

The United States, in accordance with treaties, statutes, executive orders, and judicial decisions, has recognized the right of Indian tribes to self-government and maintains a government-to-government relationship with federally recognized tribes. Indian tribes exercise inherent sovereign powers over their members and territory. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes. Based on this government-to-government relationship, DOL will continue to work with Indian tribes on its programs involving tribes in a manner that respects tribal self-government and sovereignty, honors tribal treaty and other rights, and meets the Federal Government's tribal trust responsibilities.

B. Open Communications and Respect for Cultural Values and Traditions

Communication and the exchange of ideas will be open and transparent. Department officials will respect the cultural values and traditions of the tribes. To ensure efficiency and avoid duplicative efforts, DOL will work with other Federal Departments to enlist their interest and support in cooperative efforts to assist tribes to accomplish their goals within the context of all DOL programs.

C. Ensuring Consultation Is Meaningful

The Department is committed to ongoing and continuous dialogue with Indian tribes, both formally and informally, on matters affecting tribal communities. Consultation is a critical ingredient of a sound and productive federal-tribal relationship that emphasizes trust, respect, and shared responsibility. Engaging with tribes and building relationships with tribal officials have improved the Department's policy toward Indian tribes on a broad range of DOL matters. The Department is committed to further improving its collaboration with Indian tribes and creating additional opportunities for input from all affected tribal communities. Consultation that is meaningful, effective, and conducted in good faith makes the Department's operation, decision making, and governance practices more efficient.

III. Policy Statement

A. Departmental Consultation Policy Generally

In accordance with Executive Order 13175, when formulating and implementing policies that will have tribal implications, it is the Department's policy that, to the extent practicable and permitted by law, consultation with affected Indian tribes will occur. As stated in the executive order, this refers to proposed legislation, regulations, policies, or actions that have substantial direct effects 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.

B. Implementation Responsibilities of DOL Operating Agencies

Each DOL operating agency will have an accountable process to ensure meaningful and timely input by Indian tribes on policies or actions that have tribal implications. With respect to DOL programs administered by Indian tribal governments, operating agencies will grant Indian tribal governments the maximum administrative discretion permissible consistent with applicable law, contracting requirements, and grant agreements, and will defer to Indian tribes to develop their own policies and standards where legally permissible. The Department's operating agencies will review their existing tribal consultation and program administration practices, including those of their regional offices, and revise them as needed to comply with the Department's policy as set forth in this document. If DOL agencies require technical assistance in conducting consultations, the designated Departmental official's office (see section IX below) can provide and/or coordinate such assistance.

IV. Regulations

In accordance with Executive Order 13175, to the extent practicable and permitted by law, prior to the promulgation of any regulation that has tribal implications and preempts tribal law, the DOL agency involved will:

1. Notify and consult with affected Indian tribes early in the process of developing the proposed regulation consistent with the Administrative Procedure Act, 5 U.S.C. 551 et seq., Executive Order 12866, and Executive Order 13563, and ensure that the tribes are informed about opportunities to participate in stakeholder meetings and public forums about which they might not otherwise be aware;

2. Provide a tribal summary impact statement in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, which consists of a description of the extent of the agency's prior consultation with Indian tribes, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

3. Make available to the Secretary any written communications submitted to the agency by tribal officials.

On issues relating to tribal self-governance, tribal self-determination, and implementation or administration of tribal programs, each DOL agency will make all practicable attempts where appropriate to use consensual mechanisms for developing regulations, including negotiated rulemaking in accordance with the Negotiated Rulemaking Act.

For any draft final regulation that has tribal implications that is submitted to the Office of Information and Regulatory Affairs for review under E.O. 12866, the agency will certify that the requirements of Executive Order 13175 have been met.

V. Unfunded Mandates

In accordance with Executive Order 13175, no DOL agency shall promulgate any regulation having tribal implications that is not required by statute and imposes substantial direct compliance costs on tribal communities, unless:

1. Funds necessary to pay the direct costs incurred by Indian tribal governments in complying with the regulation are provided by the Federal Government; or

2. Prior to the formal promulgation of the regulation, the agency:

a. Consulted with tribal officials early in the process of developing the proposed regulation;

b. In a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected Indian tribal governments, a summary of the nature of their concerns and DOL's position supporting the need to issue the regulation; and

c. Makes available to the Director of the Office of Management and Budget any written communications submitted to DOL by such Indian tribal governments.

VI. Flexibility and Waivers

With respect to statutory or regulatory requirements that are discretionary and subject to waiver by DOL, each DOL agency will review the processes under which Indian tribal governments apply for waivers and take appropriate steps to streamline those processes as necessary.

When reviewing any application by an Indian tribal government for a waiver of regulatory requirements in connection with any program administered by a DOL agency, the agency will consider the relevant factors with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable federal policy objectives and is otherwise appropriate as determined by the agency.

Each DOL agency will promptly render a decision upon a complete application for a waiver. The agency will provide the applicant with timely written notice of the decision and, if the application for a waiver is not granted, the reasons for such denial.

VII. Consultation Process Guidelines

1. *Notification.* When a DOL agency or regional office determines that a proposed policy or action will have tribal implications, whether for an individual tribe, regionally, or nationally, the DOL agency will have an affirmative responsibility to provide advance notice to the potentially affected Indian tribes at the earliest practicable time, but not less than 60 days prior to DOL's action. An Indian tribe may initiate a request for consultation with DOL or a DOL agency on a DOL matter that it believes has tribal implications at any time by contacting that agency or the designated Departmental official (see section IX), and the tribe should disseminate DOL provided information to its members. With respect to rulemaking proceedings of general applicability that have no unique impacts on Indian tribes, DOL agencies may use the existing **Federal Register** notice and comment process to provide notice, but should supplement this process with targeted outreach where appropriate.

2. *Subjects of Consultation.* To the extent consistent with applicable laws and administrative requirements, consultation can involve any DOL matter having tribal implications, including but not limited to: tribal program management, rulemaking, regulations, policies, waivers and flexibility; grant programs; contracting opportunities; regulatory guidance; and other matters of tribal interest. At the same time, DOL agencies should not create undue burdens on tribes with respect to regulations or other matters that do not have tribal implications. Routine matters, including normal DOL interactions with direct grantees such as monitoring, selecting grantees, and reporting requirements do not trigger further consultation processes under this policy. Enforcement policy, planning, investigations, cases and proceedings are not appropriate subjects for consultation under this policy.

3. *Initial Planning and Scoping.* Following notification to affected tribes that policies or actions have tribal implications, the DOL agency or regional office, in conjunction with the designated Departmental official's office, should engage with those tribes

on initial planning and the appropriate scope of the consultation. Initial planning and scoping should include describing the nature and extent of the expected tribal implications; identifying any time constraints or deadlines, relevant existing policies, and potential resource issues; and making a determination as to the most useful and appropriate consultation mechanism.

4. *Consultation Mechanisms.* The manner of consultation should be appropriate to the nature and complexity of the matter and can occur via mailings (e.g., for remote tribes that may not have Internet access), one or more face-to-face meetings or meetings via teleconference, roundtables, or other appropriate means and may include the use of electronic media and messaging and Web site portals. All meetings will be open to the public.

5. *Conducting Consultations.* When a consultation commences, DOL will solicit the views of the Indian tribes involved on the relevant subjects and issues. Consultation should involve a thorough examination of the subject at issue, including discussion of cultural, economic and other impacts on tribal programs, services, functions and activities; compliance guidance; programmatic and funding issues if relevant; any external constraints such as executive, judicial, or legislative actions; and any relevant technical or other regulatory issues as they affect tribes.

6. *Frequency of Consultation Meetings.* Consultation meetings may be scheduled on a regular basis or on an as needed basis except that at least one national tribal consultation meeting will be held by DOL each calendar year. For example, DOL agencies may establish a quarterly or semi-annual conference call with the tribes in order to consult with them on the regulatory proposals being considered by the agency and inform them about opportunities to participate in stakeholder meetings and public forums. To reduce costs, tribes and DOL agencies will make their best efforts to coordinate face-to-face consultation meetings to coincide with other regularly scheduled meetings (such as multi-agency and association meetings and regional tribal meetings).

7. *Submissions of Tribal Comments.* The DOL agency involved in the consultation will communicate clear and explicit instructions on the means and time frames for Indian tribes to submit comments to DOL on the matter, whether in person, by teleconference, and/or in writing, and if appropriate will allow a reasonable period of time following a consultation meeting for tribes to submit additional materials. A written communication on the correspondence of the highest elected or appointed tribal official will be considered by DOL to be the official position of the tribe on the subject at issue. If the DOL agency determines that the Administrative Procedure Act or other federal law or regulation prohibits continued discussion at a specified point in the decision-making process, the agency will so inform the Indian tribes. With respect to rulemaking proceedings of general applicability that will have no unique impacts on Indian tribes, DOL agencies may use existing **Federal Register** notices, dockets, and comment periods to obtain tribal comments, but should supplement them with additional means of obtaining tribal input where appropriate.

8. *Time Frames.* Time frames for the consultation process will depend on the nature and complexity of the consultation and the need to act quickly. Suggested guidelines are as follows:

a. The initial planning and scoping should take place within 30 days from the date of the issuance of the notice of the proposed action;

b. If a consultation meeting will occur, the meeting should be scheduled within 30 days of the completion of the planning and scoping;

c. For consultations involving one or more meetings, the consultation process should normally be concluded within 60 days of the final consultation meeting; for consultations not involving meetings the consultation process should normally be concluded within 60 days of the planning and scoping.

These time frames may be compressed in exigent situations, such as when a critical deadline is involved, or expanded as necessary for novel or highly complex matters.

9. *Reporting of Outcome of Consultation to Tribes.* The DOL agency involved in the consultation will report the status or outcome of the issue involved to the affected Indian tribes within 30 days of the conclusion of the consultations on that issue. To the extent that tribal input was not adopted, the agency will make written explanations available.

10. *Formation of Tribal Committees, Task Forces, or Work Groups.* Based on the government-to-government relationship, consultation under this policy is generally with one or more individual tribal governments. In some cases, it may become necessary for DOL to form a tribal committee, task force, or work group to study a particular policy, practice, issue, or concern. Members of such committees or work groups will include representatives of federally recognized tribal governments or their designees with authority to represent their interests or act on their behalf. Tribal representation on such committees or work groups should consist of geographically diverse small, medium and large tribes, whenever possible. Members of these committees or work groups shall make good-faith attempts to attend all meetings which shall be open to the public and may establish member roles and protocols for producing their work and obtaining input and comment on it. All final work group products or recommendations will be given serious consideration by the Department. [See Section XI below on the Federal Advisory Committee Act (FACA) exemption for consultations undertaken with officials of federally recognized tribal governments pursuant to this tribal consultation policy.]

11. *Use of Existing Statutory Advisory Committees.* DOL agencies may also use existing tribal advisory committees such as the NAETC as part of meeting their consultation responsibilities under this policy. If such an advisory committee is required by law to be used exclusively for a particular function or purpose, consultation shall take place in accordance with the requirements of such committee and nothing in this policy requires any further consultation (see, e.g., 29 U.S.C. 2911(h)).

12. *Submission of Comments by Other AI/AN Organizations.* The primary focus of formal consultation activities under this policy is with representatives of federally recognized Indian tribal governments. DOL recognizes, however, that in some cases the consultation process would be negatively affected if other (non-federally recognized) AI/AN organizations lacking the government-to-government relationship were excluded. Accordingly, nothing in this policy prohibits other AI/AN organizations that are not representatives of Indian tribal governments from providing their views to the Department.

VIII. Performance and Accountability

The consultation process and activities conducted under this policy should be accountable, transparent, and result in a meaningful outcome for the Department and for the affected Indian tribes. To enable the Department and the Indian tribes to effectively evaluate the implementation and results of this consultation policy:

1. DOL agencies will maintain records of each consultation and the manner in which the tribal concerns were addressed, and will document the status or outcome of each subject of consultation.

2. DOL agencies will develop and utilize appropriate evaluation measures to assess their efforts to determine whether their overall consultation process is effective over time.

3. DOL agencies will report annually to the office of the designated Departmental official on the frequency, scope, and effectiveness of their consultation activities including any recommendations received from Indian tribes on ways to improve the consultation process.

4. The designated Departmental official's office will compile the reports of the agencies and prepare an annual DOL consultation report evaluating the overall effectiveness of this policy which will be made available to the Indian tribes. The office will seek tribal feedback on the annual consultation report and consider any comments from Indian tribes and federal participants to determine whether DOL should make any amendments to this policy.

5. The designated Departmental official's office will prepare and submit any reports required to be submitted to the Office of Management and Budget under Executive Order 13175 and the November 5, 2009 Presidential Memorandum.

IX. Designated Officials and Points of Contact

A. Designated Departmental Official

The designated Departmental official to coordinate the implementation of this policy will be the Director, Office of Public Engagement, working in conjunction with the Department's Office of Intergovernmental Affairs in the Office of Congressional and Intergovernmental Affairs, or other Departmental official in the Office of the Secretary, as designated by the Secretary.

The duties and responsibilities of the designated Departmental official include: serving as the Secretary's expert informational resource on tribal matters; maintaining an overall understanding of tribal concerns and issues as they relate to DOL programs and coordinating and managing the Secretary's policies for Indian tribes; coordination of tribal site visits for DOL executive leadership; serving as DOL's representative on interdepartmental working groups on tribal matters; conducting periodic intradepartmental meetings and otherwise overseeing the implementation of the Department's tribal consultation policy by DOL operating agencies; providing advice and assistance to DOL agencies and regional field offices on tribal matters; and conducting outreach to national tribal government organizations.

B. Point of Contact for Each DOL Operating Agency

Each DOL operating agency will designate a senior official as having primary responsibility for tribal matters. The designated Departmental official's office will maintain an up-to-date list clearly identifying the agency tribal officials and their contact information and this information will be made available to Indian tribes. DOL agencies should also designate an alternate tribal official to serve in the absence of the primary official.

The duties and responsibilities of the agency tribal officials include: having and maintaining knowledge of this policy and the government-to-government relationships and sovereign status of Indian tribes; serving as the primary liaison with Indian tribes for their agency; ensuring the consultation responsibilities of their agencies are carried out, including those of their regional offices; and reporting to the administration in their respective agencies, as well as the designated Departmental official. Unless otherwise approved by the designated Departmental official, these responsibilities should not be placed within the agency Offices of Civil Rights, as tribal relations and consultations are treaty, trust, and government-to-government based, and are not a function of civil rights based on race.

X. Definitions

For the purposes of this policy, the following definitions apply:

American Indian and Alaska Native (AI/AN)— A member of an American Indian or Alaska Native tribe, band, nation, pueblo, village, or community of indigenous peoples in the United States, as membership is defined by the tribal community, including Native Hawaiians.

AI/AN Organization—An AI/AN organization or group having members that are not representatives of federally recognized Indian tribal governments, such as state tribes and members of urban AI/AN groups that are not located on Indian tribal lands.

Consultation—An enhanced form of communication consisting of an open and free exchange of information and opinion among parties which emphasizes trust, respect, and shared responsibility. The consultation process enables mutual understanding, facilitates the effort to reach consensus on issues, and contributes to informed decision making.

Deliberative Process Privilege—A privilege exempting the Federal Government from disclosure of government agency materials containing opinions, recommendations, and other internal communications that are part of the deliberative process within the Department or agency.

Department—Means the U.S. Department of Labor.

DOL Operating Agency—A Department of Labor administration, agency, bureau, office, or division that: (1) Has operational responsibility for a Departmental program that has tribal implications; or (2) has been designated by the Secretary to participate in this policy.

Executive Order—An order issued by the Federal Government's executive on the basis of authority specifically granted to the executive branch (as by the U.S. Constitution or a Congressional Act).

Indian Tribe—An Indian or Alaska Native tribe that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a, and with whom the Federal Government maintains a government-to-government relationship, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)(43 U.S.C. 1601 et seq.). The Department of the Interior's Bureau of Indian Affairs maintains and regularly publishes the official list of federally recognized Indian tribes which are generally established pursuant to a federal treaty, statute, executive order, court order, or a federal administrative action making these tribes eligible for certain federal programs and benefits because of their status as Indians.

Policies or Actions with Tribal Implications—Refers to proposed legislation, regulations, policies, and actions that have substantial direct effects on one or more Indian tribes, 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. This encompasses a broad range of DOL programs and activities targeted at tribal governments or having AI/ANs as participants including, but not limited to, tribal program management, rulemaking, regulations, policies, waivers and flexibility; grant programs; contracting opportunities; regulatory guidance; or other DOL activities that would have a substantial direct effect on a tribe's traditional way of life, tribal lands, tribal resources, or the ability of

the tribe to govern its members or to provide services to its members. This term does not include matters that are the subject of litigation or that are undertaken in accordance with an administrative or judicial order.

Secretary—Means the Secretary of Labor.

Substantial Direct Compliance Costs—Those costs incurred directly from implementation of changes necessary to meet the requirements of a federal mandate. Because of the large variation in resources among tribes, ''substantial costs'' will vary by Indian tribe. Where necessary and appropriate, the Secretary will determine the level of costs that represent ''substantial costs'' in the context of an Indian tribe's resource base.

To the Extent Practicable and Permitted by Law—Refers to situations where the opportunity for consultation is limited due to practical constraints including time, budget, or other such reason, and situations where other legal requirements take precedence.

Tribal Committee, Task Force, or Work Group—A group composed of Indian tribal government officials or their designees with authority to represent their interests or act on their behalf that is formed to work on a particular policy, practice, issue, or concern. This can include representatives of existing organizations representing federally recognized tribes, such as the National Congress of American Indians.

Tribal Officials—Tribal council members and delegates, chairpersons, or other elected or duly appointed officials of the governing bodies of Indian tribes or authorized intertribal organizations or their designees with authority to represent them or act on their behalf.

XI. Supplemental Terms and Effective Date

1. Inapplicability of the Federal Advisory Committee Act (FACA). In accordance with section 204(b) of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the provisions of FACA are not applicable to consultations between the Federal Government and elected officers of tribal governments or their designated employees with authority to act on their behalf. Therefore, FACA is generally not applicable to consultations undertaken pursuant to this tribal consultation policy. As the Office of Management and Budget stated in its guidelines implementing section 204(b):

> This exemption applies to meetings between Federal officials and employees and * * * tribal governments acting through their elected officers, officials, employees, and Washington representatives, at which 'views, information, or advice' are exchanged concerning the implementation of intergovernmental responsibilities or administration, including those that arise explicitly or implicitly under statute, regulation, or Executive Order. The scope of meetings covered by this exemption should be construed broadly to include meetings called for any purpose relating to intergovernmental responsibilities or administration. Such meetings include, but are not limited to, meetings called for the purpose of seeking consensus, exchanging views, information, advice, and/or recommendations; or facilitating any other interaction relating to intergovernmental responsibilities or administration. (OMB Memorandum 95–20 (September 21, 1995), pp. 6–7, published at 60 FR 50651, 50653 (September 29, 1995)).

If, however, DOL were to form an advisory committee consisting of (non-federally recognized) AI/AN organizations or groups lacking the government-to-government relationship, the section 204(b) exception would not apply and all FACA requirements would need to be followed.

2. Reservation of Authorities. Nothing in this policy waives or diminishes the U.S. Government's rights, authorities, immunities, or privileges, including the deliberative process privilege. Among other things, internal communications on the development of proposed legislation, enforcement policy, and other internal policy matters are part of the deliberative process by the Executive Branch and will remain confidential.

Nothing in this policy waives or diminishes any tribal rights, authorities, immunities, or privileges including treaty rights and sovereign immunities, and this policy does not diminish any rights or protections afforded to individual AI/ANs under federal law.

3. Disclaimer. This document is intended to improve the Department's management of its relations and cooperative activities with Indian tribes. DOL has no obligation to engage in any consultation activities under this policy unless they are practicable and permitted by law. Nothing in this policy requires any budgetary obligation or creates a right of action against the Department for failure to comply with this policy nor creates any right, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

Dated: April 12, 2012.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2012–9372 Filed 4–17–12; 8:45 am]

BILLING CODE 4510–23–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 26, 2012 through March 30, 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 No.	Subject firm	Location	Impact date
81,237	TRG Customer Solutions, Inc.	Charleston, WV	February 13, 2010.
81,329	Somerset Foundries, Consolidated Industries, Inc.	Somerset, PA	February 14, 2011.
81,339	Asta, Inc., Augusta Staffing Agency	Waynesboro, GA	January 27, 2011.
81,379	Manpower Staffing Agency, Working On-Site at International Business Marchines (IBM).	Phoenix, AZ	February 3, 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 No.	Subject firm	Location	Impact date
81,128	MedQuist/M*Modal, Teleworkers, Vaco, CSI, Robert Half, Matrix, Apex, Top-notch Teksystems, etc.	Franklin, TN	February 13, 2010.
81,289	Transcom Worldwide (US) Inc., Transcom Worldwide S.A., A Luxembourg Company.	Catharines Ontario Canada, L2R 7G1, LA.	February 1, 2011.
81,292	Siemens Medical Solutions, USA, Inc., Oncology Care Systems (Radiation Oncology), Source Right Solutions.	Concord, CA	February 1, 2011.
81,297	Samsung Information Systems America, Inc., Hard Disk Drive Lab, Secure Talent.	San Jose, CA	February 3, 2011.

TA–W No.	Subject firm	Location	Impact date
81,323	UBS Financial Services, Inc., UBSFS, Wealth Management Americas, WMA Operations, UBS Americas, etc.	Nashville, TN	February 10, 2011.
81,338	GlaxoSmithKline LLC, Global Manufacturing and Supply Division, Manpower, Strategic Resources etc.	East Durham, NY	February 15, 2011.
81,342	GrafTech International Holdings, Inc., Engineered Solutions Division	Anmoore, WV	October 23, 2011.
81,368	CitiGroup Technology, Inc. (CTI), Financial Reporting Operations, Citigroup, Inc., Adecco, Advantage, etc.	Tampa, FL	February 24, 2011.
81,392	DSI–ITI, LLC, Global Tel*Link Corporation, Manpower and Professional Staffing Solutions.	Altoona, PA	March 5, 2011.
81,422	Thermo Fisher Scientific Milwaukee, LLC, Molecular Biology Reagents Division	Milwaukee, WI	March 14, 2011.
81,426	Dixtal Medical, Inc, Philips Healthcare, CT Personnel Co., Randstad US	Wallingford, CT	March 16, 2011.
81,429	ICL Performance Products LP, ICL Performance Products, Inc	Carteret, NJ	March 19, 2011.
81,438	Emporia Foundry, Campbell Foundry	Emporia, VA	March 13, 2011.

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 criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
81,401	JP Morgan Chase & Co., Investment Bank-IBSO, Dividend Department	Brooklyn, NY.	
81,424	VF Americas Sourcing, VF Services, Inc., VF Corporation	Plantation, FL.	

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 No.	Subject firm	Location	Impact date
81,025	Dendreon Corporation, LabTemps, Ajlon and Parmalogics Recruiting	Seattle, WA.	

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 No.	Subject firm	Location	Impact date
81,253	Sears Holding Management Corporation, Sears Holding Corporation	Hoffman Estates, IL.	
81,268	Follansbee Steel, Louis Berkman Company, Louis Berkman LLC WV	Follansbee, WV.	
81,344	Creditron Financial Corporation, d/b/a Telatron Marketing Group	Erie, PA.	

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 petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
81,398	Pratt and Whitney, United Technologies Corporation, Far Group and Experimental Test Group.	East Hartford, CT.	

I hereby certify that the aforementioned determinations were issued during the period of *March 26, 2012 through March 30, 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: April 5, 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–9246 Filed 4–17–12; 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 30, 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 30, 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 5th day of April 2012.

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[19 TAA petitions instituted between 3/26/12 and 3/30/12]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
81447	Hasbro (Workers)	Providence, RI	03/26/12	03/25/12
81448	General Dynamics—Itronix (State/One-Stop)	Spokane Valley, WA	03/26/12	03/23/12
81449	RR Donnelley (Workers)	Glen Mills, PA	03/26/12	03/22/12
81450	Schneider Electric (Company)	Seneca, SC	03/26/12	03/23/12
81451	AT&T Hoffman Estates (Workers)	Hoffman Estates, IL	03/27/12	03/26/12
81452	T–Mobile USA, Inc. (State/One-Stop)	Redmond, OR	03/27/12	03/26/12
81453	Crawford & Company, ICT Help Desk (Workers)	Lake Zurich, IL	03/27/12	03/23/12
81454	SIC Processing USA (Company)	Hillsboro, OR	03/28/12	03/23/12
81455	Abound Solar, Inc. (State/One-Stop)	Longmont, CO	03/29/12	03/27/12
81456	Siltronic Corporation (Company)	Portland, OR	03/29/12	03/28/12
81457	Shaw's Supermarket/Supervalu (Workers)	West Bridgewater, MA	03/29/12	03/15/12
81458	Rocktenn (Workers)	Shelby, NC	03/30/12	03/29/12
81459	IBM Corporation Problem, Change, Incident Management Group(s) (Workers).	Dallas, TX	03/30/12	03/29/12
81460	Brown Shoe (Workers)	Sikeston, MO	03/30/12	03/29/12
81461	LiteSteel Technologies (Workers)	Troutville, VA	03/30/12	03/29/12
81462	Kopin Corporation (Company)	Taunton, MA	03/30/12	03/29/12
81463	SNC Manufacturing (Company)	Oshkosh, WI	03/30/12	03/28/12
81464	Saint John Medical Center—PeaceHealth (State/One-Stop)	Longview, WA	03/30/12	03/29/12
81465	Anthem Blue Cross and Blue Shield. Credentialing Administration (Company).	Richmond, VA	03/30/12	03/29/12

[FR Doc. 2012–9247 Filed 4–17–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Existing Information Collection; Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired

format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 57.22004(c); 57.22229(c) and (d); 57.22230(b) and (c); 57.22231; and 57.22239. OMB last approved this information collection request (ICR) on August 19, 2009.

DATES: All comments must be postmarked or received by midnight Eastern Time on June 18, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with ''OMB 1219–0103'' and sent to both the Office of Management and Budget (OMB) and the Mine Safety and Health Administration (MSHA). Comments to MSHA may be sent by any of the methods listed below.

- *Federal E–Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441, include ''OMB 1219–0103'' in the subject line of the message.
- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Methane is a flammable gas commonly found in underground mines in the United States. Although methane is often associated with underground coal mines, it also occurs in some metal and nonmetal mines (M/NM). Underground metal and Nonmetal mines are categorized according to the potential to liberate methane (30 CFR 57.22003—Mine category or subcategory). Methane is a colorless, odorless, tasteless gas, and it tends to rise to the roof of a mine because it is lighter than air. Although methane itself is nontoxic, its presence reduces the oxygen content by dilution when mixed with air and, consequently. can act as an asphyxiant when present in large quantities.

Methane may enter the mining environment from a variety of sources including fractures, faults, or shear zones overlying or underlying the strata that surround the ore body, or from the ore body itself. It may occur as an occluded gas within the ore body. Methane mixed with air is explosive in the range of 5 to 15 percent, provided that 12 percent or more oxygen is present. The presence of dust containing volatile matter in the mine atmosphere may further enhance the explosion potential of methane in a mine. Section 103(i) of the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, requires additional inspections to be conducted at mines depending on the amount of methane liberated from a mine.

This information collection addresses the recordkeeping associated with:

30 CFR 57.22004(c)—Category placement or change in placement
30 CFR 57.22229(c) & (d)—Weekly testing (I–A, III, and V–A mines)
30 CFR 57.22230(b) & (c)—Weekly testing (II–A mines)
30 CFR 57.22231—Actions at 0.25 percent methane (I–B, II–B, V–B, and VI mines)
30 CFR 57.22239—Actions at 2.0 percent methane (IV mines)

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed extension of the information collection related to methane detected in the atmosphere of underground metal and nonmetal (MNM) Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- 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;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses, to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements.* The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with safety and health standards. MSHA has updated the data in respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

Summary

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Methane Detected in Mine Atmosphere (Applies to Underground Metal and Nonmetal mines).
OMB Number: 1219–0103.
Affected Public: Business or other for-profit.
Cite/Reference/Form/etc: 30 CFR 57.22004, 57.22229, 57.22230, 57.22231, and 57.22239.
Total Number of Respondents: 6.
Frequency: infrequent.
Total Number of Responses: 319.
Total Burden Hours: 27.25 hours.
Total Hour Burden Cost: $ 0.0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: April 12, 2012.

George F. Triebsch,

Certifying Officer.

[FR Doc. 2012–9245 Filed 4–17–12; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Submission for OMB Review; Comment Request

The National Endowment for the Arts (NEA) has submitted revisions to the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: *Blanket Justification for NEA Funding Application Guidelines and Reporting Requirements*. Copies of this ICR, with applicable supporting documentation, may be obtained by visiting *www.Reginfo.gov*.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202/395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Could help minimize the burden of the collection of information on those who are to respond, including through the use of electronic submission of responses through *Grants.gov*.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of revisions to two of its grantee reporting requirements. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information that is being revised must be reported; (3) who will be required or asked to report on the revised information; (4) what the revised forms will be used for; (5) an estimate of the number of responses to the revised forms; (6) the average burden hours per response for the revised forms; (7) an estimate of the total number of hours needed to prepare the revised forms. This entry is not subject to 44 U.S.C. 3504(h).

Agency: National Endowment for the Arts.

Title: Blanket Justification for NEA Funding Application Guidelines and Reporting Requirements.

OMB Number: 3135–0112.

Frequency: Annually.

Affected Public: Nonprofit organizations, government agencies, and individuals.

Estimated Number of Respondents: 64.

Estimated Time Per Respondent: 8 hours.

Total Burden Hours: 512.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

Description: According to OMB Circulars A–102 and A–110, recipients of federal funds are required to report on project activities and expenditures. Reporting requirements are necessary to ascertain that grant projects have been completed, and that all terms and conditions have been fulfilled. This information collection revision serves to update only the portion of the blanket clearance of all NEA guidelines, applications, and reporting requirements that refer to the agency's state arts agency (SAA) and regional arts organization (RAO) grantees.

Kathleen Edwards,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 2012–9328 Filed 4–17–12; 8:45 am]

BILLING CODE 7537–01–P

OFFICE OF SPECIAL COUNSEL

Service Contract Inventory for Fiscal Year (FY) 2011

AGENCY: Office of Special Counsel.

ACTION: Notice of availability—FY 2011 Service Contract Inventory.

SUMMARY: Through this notice, the Special Counsel announces the availability of the Office of Special Counsel's service contract inventory on its Web site, at *http://www.osc.gov/RR_OSCReportsAndInformation.htm.* A service contract inventory is a tool for assisting an agency in better understanding how contracted services are being used to support mission and operations and whether the contractors' skills are being utilized in an appropriate manner.

FOR FURTHER INFORMATION CONTACT: Karl Kammann, Director of Finance, at *kkammann@osc.gov*; 1730 M Street NW., Suite 218, Washington, DC 20036–4505, or by facsimile at (202) 254–3711.

SUPPLEMENTARY INFORMATION: Section 743 of Division C of the Consolidated Appropriations Act of 2010, Public Law 111–117, requires civilian agencies, other than the Department of Defense, that are required to submit an inventory in accordance with the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270, 31 U.S.C. 501 note) to submit their inventories to the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) by December 30, 2011. In addition, section 743 requires these agencies, which include the U.S. Office of Special Counsel, to (1) make the inventory available to the public by posting the inventory on its agency homepage, (2) provide OFPP with the Web site address (URL) on which the inventory is being posted so that the inventory can be linked to a central OMB Web page, and (3) publish in the **Federal Register** a notice announcing that the inventory is available to the public along with the name, telephone number, and email address of an agency point of contact. Through this notice, the Office of Special Counsel announces the availability of its inventory on the following Web site: *http://www.osc.gov/RR_OSCReportsAndInformation.htm.* The point of contact for the inventory is provided under the **FOR FURTHER INFORMATION CONTACT** section in this notice.

Dated: April 12, 2012.

Carolyn N. Lerner,

Special Counsel.

[FR Doc. 2012–9262 Filed 4–17–12; 8:45 am]

BILLING CODE 7405–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, May 2, 2012, at 11 a.m.

PLACE: Commission Hearing Room, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public. The open session will be audiocast. The

audiocast may be accessed via the Commission's Web site at *http://www.prc.gov.* A period for public comment will be offered following consideration of the last numbered item in the open session.

MATTERS TO BE CONSIDERED: The agenda for the Commission's May 2, 2012 meeting includes the items identified below.

PORTIONS OPEN TO THE PUBLIC:

1. Report on legislative activities.
2. Report on communications with the public.
3. Report on status of Commission dockets.
4. Report from the Office of the Secretary and Administration.
5. Report from the Office of Accountability and Compliance.
6. Report on international activities.
7. Presentation on the GSA Mail Management program. Chairman's public comment period.

PORTION CLOSED TO THE PUBLIC:

8. Discussion of pending litigation.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001, at 202–789–6820 (for agenda-related inquiries) and Shoshana M. Grove, Secretary of the Commission, at 202–789–6800 or *shoshana.grove@prc.gov* (for inquiries related to meeting location, access for handicapped or disabled persons, the audiocast, or similar matters).

Dated: April 16, 2012.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–9429 Filed 4–16–12; 4:15 pm]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66808; File No. SR–BATS–2012–013]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving a Proposed Rule Change To Amend BATS Exchange, Inc. Rule 2.12 To Make Permanent the Pilot Program That Permits BATS Exchange, Inc. To Receive Inbound Routes of Equities Orders Through BATS Trading, Inc., BATS Exchange's Routing Broker-Dealer, From BATS-Y Exchange, Inc.

April 13, 2012.

I. Introduction

On March 8, 2012, BATS Exchange, Inc. (''BATS'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change requesting permanent approval of the Exchange's pilot program that permits the Exchange to receive inbound routes of equities orders through BATS Trading, Inc. (''BATS Trading''), the Exchange's routing broker-dealer, from BATS Y-Exchange, Inc. (''BATS-Y''). The proposed rule change was published for comment in the **Federal Register** on March 14, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

BATS Trading is a broker-dealer that is a member of the Exchange and is permitted to provide members of BATS-Y optional routing services to other market centers.[4] BATS Trading is owned by BATS Global Markets (''Corporation''). The Corporation also owns two registered securities exchanges—the Exchange [5] and BATS-Y.[6] Thus, BATS Trading is an affiliate of the Exchange and BATS-Y.

On September 9, 2010, the Exchange filed an immediately effective proposed rule change to, among other things, permit the Exchange to receive inbound routes of orders that BATS Trading routes in its capacity as a facility of BATS-Y on a pilot basis ending October 15, 2011.[7] On September 29, 2011, the Exchange filed an immediately effective proposed rule change to extend the pilot period six months ending April 15, 2012.[8] The Exchange now seeks permanent approval of this inbound routing pilot.[9]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[11] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to BATS Trading's affiliation with the Exchange to permit the Exchange to accept inbound orders that BATS Trading routes in its capacity as a facility of BATS-Y, on a pilot basis.[13] The Exchange now seeks to make this pilot permanent. Specifically, the Exchange states it is in compliance with the following limitations and conditions: [14]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66571 (March 12, 2012), 77 FR 15153 (''Notice'').

[4] BATS Trading operates as a facility of BATS-Y that provides outbound routing from BATS-Y to other market centers, subject to certain conditions. *See* Securities Exchange Act Release No. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (Order granting the exchange registration of BATS-Y Exchange, Inc.) (''BATS-Y Approval Order'').

[5] *See* Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.).

[6] *See generally* BATS-Y Approval Order, *supra* note 4.

[7] *See* Securities Exchange Act Release No. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR–BATS–2010–024) (''Inbound Router Notice'').

[8] *See* Securities Exchange Act Release No. 65516 (October 7, 2011), 76 FR 63977 (October 14, 2011) (SR–BATS–2011–040).

[9] *See* Notice, *supra* note 3.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Inbound Router Notice, 75 FR at 57097.

[14] *See* Notice, 77 FR at 15154.

• The Exchange shall enter into a plan pursuant to Rule 17d–2 under the Exchange Act with a non-affiliated self-regulatory organization (''SRO'') to relieve the Exchange of regulatory responsibilities for BATS Trading with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and enter into a regulatory contract (''Regulatory Contract'') with a non-affiliated SRO to perform regulatory responsibilities for BATS Trading for unique Exchange rules.

• The Regulatory Contract shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively ''Exceptions'') in which BATS Trading is identified as a participant that has potentially violated Exchange or Commission Rules, and shall require that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which BATS Trading is identified as a participant that has potentially violated Exchange or Commission Rules.

• The Exchange, on behalf of the Corporation, shall establish and maintain procedures and internal controls reasonably designed to ensure that BATS Trading does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated member organizations of the Exchange in connection with the provision of inbound order routing to the Exchange.

• The Exchange may furnish to BATS Trading the same information on the same terms that the Exchange makes available in the normal course of business to any other member organization.

The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to BATS Trading, and has demonstrated that BATS Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage.[15]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[16] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit BATS Trading, in its capacity as a facility of BATS-Y, to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.

The Exchange has proposed four ongoing conditions applicable to BATS Trading's inbound routing activities in its capacity as a facility of BATS-Y, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of BATS Trading,[17] combined with a non-affiliated SRO's monitoring of BATS Trading's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to BATS Trading.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–BATS–2012–013) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9342 Filed 4–17–12; 8:45 am]

BILLING CODE 8011–01–P

[15] *See id.*

[16] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR–Amex–2008–62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

[17] This oversight will be accomplished through a 17d–2 Agreement. *See* Inbound Router Notice, 75 FR at 57097.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66789; File No. SR–ISE–2012–30]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Increasing Certain Rebates and Taker Fees for Complex Orders in Options on the SPDR® S&P500® ETF Trust

April 12, 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 April 10, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to increase certain rebates and taker fees for complex orders in options on the SPDR® S&P500® ETF Trust (''SPY''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction charges and credits to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in a number of options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees are applicable to regular and complex orders executed in the Select Symbols. The maker/taker fees for complex orders in the Select Symbols also apply to all symbols that are in the Penny Pilot program.[4] The Exchange also currently assesses maker/taker fees for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'') [5] and for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[6] Maker/taker fees (and rebates) for complex orders are assessed on the following order-type categories: ISE Market Maker,[7] Market Maker Plus,[8] Firm Proprietary, Customer (Professional) [9], Non-ISE Market Maker[10], and Priority Customer.[11] The Exchange is proposing to increase certain rebate amounts and taker fees for complex orders in options on only one Select Symbol—SPY—as follows.

In the Select Symbols, the Exchange currently provides a base rebate of $0.32 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex orderbook. Additionally, Members can earn a higher rebate amount by achieving certain average daily volume (ADV) thresholds on a month-to-month basis. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders for options on SPY that they send to the Exchange, the Exchange is proposing to increase the base amount of the rebate for options on SPY to $0.33 per contract. Additionally, the Exchange is proposing to increase the amount of that rebate even further, on a month-by-month and Member-by-Member basis, if such Member achieves a certain ADV of Priority Customer complex order contracts executed during the calendar month, as follows: If the Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount for such SPY option contracts shall be $0.34 (currently $0.33) per contract per leg; if the Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount for such SPY option contracts shall be $0.35 (currently $0.34) per contract per leg. The highest SPY rebate amount achieved by the Member for the current calendar month shall apply retroactively to all Priority Customer complex order SPY contracts that trade with non-Priority Customer complex orders in the complex orderbook executed by the Member during such calendar month.

Further, the Exchange currently provides a rebate of $0.06 per contract, per leg, for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders for options on SPY that they send to the Exchange, the Exchange is proposing to increase the rebate to $0.07 per contract, per leg, for Priority Customer complex orders for options on SPY, regardless of size, when these orders trade against quotes or orders in the regular orderbook.

Finally, for complex orders in the Select Symbols (including SPY), the Exchange currently charges a ''taker'' fee of: (i) $0.34 Per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.38 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a ''taker'' fee for complex orders in the Select Symbols. The Exchange now proposes to increase the ''taker'' fee for complex orders in SPY to (i) $0.35 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.39 for Non-ISE Market Maker orders. The Exchange is not proposing to change the ''maker'' fees in SPY.

Additionally, ISE Market Makers who remove liquidity in SPY from the complex order book by trading with Priority Customer orders that are preferenced to them are currently charged $0.32 per contract. The Exchange now proposes to increase to $0.33 per contract the amount charged to ISE Market Makers who remove liquidity in SPY from the complex order book by trading with Priority Customer orders that are preferenced to them.

Since the rate changes to the Schedule of Fees pursuant to this proposal will be effective upon filing, for the transactions occurring in April 2012 prior to the effective date of this filing members will be assessed the rates in effect immediately prior to those proposed by this filing. For transactions occurring in April 2012 on and after the effective date of this filing, members will be assessed the rates proposed by this filing.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable dues, fees and

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Exchange Act Release Nos. 65021 (August 3, 2011), 76 FR 48933 (August 9, 2011) (SR–ISE–2011–45); and 65550 (October 13, 2011), 76 FR 64984 (October 19, 2011) (SR–ISE–2011–65).

[5] *See* Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72).

[6] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); and 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06).

[7] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[8] A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics during that month. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

[9] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[10] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Act, registered in the same options class on another options exchange.

[11] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to interact with and respond to certain types of orders.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides these types of rebates, and is now merely proposing to increase the rebate amount with respect to the SPY product only. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange also believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook because paying a rebate, in those instances, would also attract additional order flow to the Exchange.

The Exchange believes that its proposal to increase to $0.35 per contract (from $0.34 per contract) the ''taker'' fee for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders, and to increase to $0.39 per contract (from $0.38 per contract) for Non-ISE Market Maker orders, in SPY is reasonable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes and in some cases, is lower than the fees assessed by other exchanges. In addition, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access fees, API/Session fees, market data fees, etc. Therefore, it is appropriate and not unfairly discriminatory to assess a higher transaction fee on Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that increasing its complex order rebates will attract additional complex order business.

The Exchange further believes that the Exchange's complex order rebates and its maker/taker fees are not unfairly discriminatory because those structures are consistent with fee structures that exist today at other options exchanges. Additionally, the Exchange believes that the proposed fees and rebates are fair, equitable and not unfairly discriminatory because the proposed fees and rebates are consistent with price differentiation that exists today at other option exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. With this proposed rebate change, the Exchange believes it remains an attractive venue for market participants to trade complex orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–30. 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–ISE–2012–30 and should be submitted on or before May 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9282 Filed 4–17–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66795; File No. SR–NYSEAmex-2012–21]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Recent Changes to FINRA Rules 7440 and 7450, and To Adopt Recent Changes to FINRA Rule 5320 by Amending Supplementary Material .02 to NYSE Amex Equities Rule 5320 To Require that Member Organizations Report to the Order Audit Trail System Information Barriers Put Into Place by the Member Organization in Reliance on Supplementary Material .02 to NYSE Amex Equities Rule 5320

April 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2012, NYSE Amex LLC (''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes (i) to adopt recent changes to Financial Industry Regulatory Authority, Inc. (''FINRA'') Rules 7440 and 7450, which the Exchange has incorporated by reference in its own rules, and (ii) adopt recent changes to FINRA Rule 5320 by amending Supplementary Material .02 to NYSE Amex Equities Rule 5320 to require that member organizations report to the Order Audit Trail System (''OATS'') information barriers put into place by the member organization in reliance on Supplementary Material .02 to NYSE Amex Equities Rule 5320. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, the Commission's Web site at www.sec.gov, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) adopt recent changes to FINRA Rules 7440 and 7450, which the Exchange has incorporated by reference in its own rules, and (ii) adopt recent changes to FINRA Rule 5320 by amending Supplementary Material .02 to NYSE Amex Equities Rule 5320 to require that member organizations report to OATS information barriers put into place by the member organizations in reliance on Supplementary Material .02 to NYSE Amex Equities Rule 5320.[3]

FINRA recently received Commission approval of changes to the order recording and transmission requirements of the OATS rules in FINRA Rules 7440 and 7450.[4] First, FINRA amended FINRA Rule 7440 to require FINRA members relying on the no-knowledge exception in Supplementary Material .02 to FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) to report information to OATS regarding the information barriers adopted by the member in reliance on the exception—FINRA also added this requirement under Supplementary Material .02 to FINRA Rule 5320. Second, FINRA amended FINRA Rule 7440 to extend, to all OATS-eligible securities, the existing requirement to reflect on OATS reports a customer's instruction regarding display of the customer's limit orders—the requirement previously applied only to limit orders involving NMS stocks. Finally, FINRA amended FINRA Rule 7450 to codify the specific time by which OATS reports must be transmitted to FINRA.

The Exchange recently adopted the NYSE Amex Equities Rule 7400 Series, which consists of NYSE Amex Equities Rules 7410 through 7470 and is based substantially on the FINRA Rule 7400 Series.[5] In this regard, NYSE Amex Equities Rules 7440 and 7450 incorporate by reference the order data recording and transmission requirements of FINRA Rules 7440 and 7450, respectively, by requiring member organizations and associated persons to comply with FINRA Rules 7440 and 7450 as if those rules were part of the Exchange's rules. Accordingly, the Exchange hereby proposes to adopt the changes to FINRA Rules 7440 and 7450 that were approved pursuant to SR–FINRA–2011–063. [6]

The Exchange also recently adopted NYSE Amex Equities Rule 5320, which is substantially the same as FINRA Rule 5320 and prohibits trading ahead of customer orders with certain exceptions, including large order and institutional account exceptions, a no-knowledge exception, a riskless principal exception, an intermarket sweep order exception, and odd lot and bona fide error transaction exceptions.[7] The Exchange hereby proposes to adopt as Supplementary Material .02(b) to NYSE Amex Equities Rule 5320 the same language that was approved pursuant to SR–FINRA–2011–063 as Supplementary Material .02(c) to FINRA Rule 5320.[8] Specifically, if a member organization implements and utilizes appropriate information barriers in reliance on the no-knowledge exception

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's affiliate, the New York Stock Exchange LLC, has filed a substantially similar rule filing. *See* SR–NYSE–2012–09 filed April 2, 2012.

[4] *See* Securities Exchange Act Release No. 66021 (December 21, 2011), 76 FR 81551 (December 28, 2011) (SR–FINRA–2011–63) [sic].

[5] *See* Securities Exchange Act Release No. 65524 (October 7, 2011), 76 FR 64151 (October 17, 2011) (SR–NYSEAmex–2011–74).

[6] The Exchange notes that the approved changes to FINRA Rules 7440 and 7450 that the Exchange proposes to adopt would be applicable only to Exchange member organization [sic] that are also FINRA members. In particular, the changes relate to cross-references to FINRA Rule 5320, and for the Exchange, to NYSE Amex Equities Rule 5320, which is not applicable to Proprietary Trading Firms, as defined in NYSE Amex Equities Rule 7410(p), because they do not have customers and therefore do not need to maintain information barriers.

[7] *See* Securities Exchange Act Release No. 65165 (August 18, 2011), 76 FR 53009 (August 24, 2011) (SR–NYSEAmex–2011–59).

[8] For consistency with Exchange rules, the Exchange proposes to change references from ''members'' in Supplementary Material .02(c) to FINRA Rule 5320 to ''member organizations'' in proposed Supplementary Material .02(b) to NYSE Amex Equities Rule 5320. The Exchange also proposes to designate the existing text of Supplementary Material .02 to NYSE Amex Equities Rule 5320 as paragraph (a) thereto.

provided under Supplementary Material .02 to NYSE Amex Equities Rule 5320, the member organization must uniquely identify such information barriers as prescribed in FINRA Rule 7440(b)(19).

The no-knowledge exception in Supplementary Material .02 to NYSE Amex Equities Rule 5320 provides that if a member organization implements and uses an effective system of internal controls—such as appropriate information barriers—that operate to prevent one trading unit from obtaining knowledge of customer orders held by a separate trading unit, that other trading unit may trade in a proprietary capacity at prices that would satisfy the customer orders held by the separate, walled-off trading unit. Through the use of OATS, FINRA will be able to ascertain, on an automated basis, those member organizations claiming the no-knowledge exception.[9] This will reduce the potential for ''false positive'' alerts by allowing FINRA to account for the existence of information barriers when running automated surveillance patterns designed to identify inappropriate trading ahead of customer orders. These new requirements should substantially reduce the number of ''false positives'' that are identified through automated surveillance patterns by permitting FINRA to account for information barriers when trading ahead may otherwise be indicated.

The Exchange proposes to implement the changes proposed herein on the same date that FINRA implements the changes approved pursuant to SR–FINRA–2011–063, thereby eliminating the potential for different regulatory requirements between common members.[10]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing greater harmonization among NYSE Rules, NYSE Amex Equities rules, and FINRA Rules of similar substance and purpose. This would result in less burdensome and more efficient regulatory compliance, which would foster cooperation and coordination with persons engaged in facilitating transactions in securities and promote the protection of investors and the public interest. The changes proposed herein are also designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade by ensuring that FINRA Rules incorporated by reference in the NYSE Amex Equities Rules and rules that are common among NYSE, NYSE Amex Equities, and FINRA remain consistent after amendments to the particular FINRA Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may become effective on the same date that FINRA implements the changes to FINRA Rules 7440, 7450, and 5320.[16] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, designates the proposal operative upon filing.[17] Waiving the 30-day operative delay will enable the Exchange to implement the proposed rule change on the same day that FINRA implements the changes to its rules on which the proposed rule change is based, thereby eliminating the potential for different regulatory requirements for members of both FINRA and the Exchange.

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–NYSEAmex–2012–21 on the subject line.

[9] All Exchange member organizations that are subject to NYSE Amex Equities Rule 5320 are also FINRA members, and FINRA reviews compliance with that rule pursuant to an allocation plan under Rule 17d–2 of the Securities Exchange Act of 1934.

[10] FINRA has announced that it will implement the changes on April 16, 2012. *See http://www.finra.org/Industry/Compliance/MarketTransparency/OATS/OATSReport/P125612.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] FINRA has announced that it will implement the changes on April 16, 2012. *See supra* note 10.

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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- NYSEAmex–2012–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the New York Stock Exchange LLC's principal office and on its Internet Web site at *www.nyse.com.* 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-NYSEAmex–2012–21, and should be submitted on or before May 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9287 Filed 4–17–12; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66807; File No. SR–BYX–2012–006]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Approving a Proposed Rule Change To Amend BATS Y-Exchange, Inc. Rule 2.12 to Make Permanent the Pilot Program That Permits BATS Y-Exchange, Inc. To Receive Inbound Routes of Equities Orders Through BATS Trading, Inc., BATS Y-Exchange's Routing Broker-Dealer, From BATS Exchange, Inc.

April 13, 2012.

I. Introduction

On March 8, 2012, BATS Y-Exchange, Inc. (''BYX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change requesting permanent approval of the Exchange's pilot program that permits the Exchange to receive inbound routes of equities orders through BATS Trading, Inc. (''BATS Trading''), the Exchange's routing broker-dealer, from BATS Exchange, Inc. (''BATS''). The proposed rule change was published for comment in the **Federal Register** on March 14, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

BATS Trading is a broker-dealer that is a member of the Exchange and is permitted to provide members of BATS optional routing services to other market centers.[4] BATS Trading is owned by BATS Global Markets (''Corporation''). The Corporation also owns two registered securities exchanges—the Exchange[5] and BATS.[6] Thus, BATS Trading is an affiliate of the Exchange and BATS.

On August 13, 2010, the Commission approved the Exchange's application for registration as a national securities exchange.[7] As part of that approval, the Exchange was approved to receive inbound routes of orders by BATS Trading in its capacity as an order routing facility of BATS on a pilot period of twelve months.[8] On September 29, 2011, the Exchange filed an immediately effective proposed rule change to extend the pilot period six months ending April 15, 2012.[9] The Exchange now seeks permanent approval of this inbound routing pilot.[10]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[12] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66572 (March 12, 2012), 77 FR 15152 (''Notice'').

[4] BATS Trading operates as a facility of BATS that provides outbound routing from BATS to other market centers, subject to certain conditions. *See* Securities Exchange Act Release No. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR–BATS–2010–024).

[5] *See* Securities Exchange Act Release No. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS Y–Exchange, Inc.) (''BYX Approval Order'').

[6] *See* Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.).

[7] *See generally* BYX Approval Order, *supra* note 5.

[8] *See* BYX Approval Order, 75 FR at 51304.

[9] *See* Securities Exchange Act Release No. 65515 (October 7, 2011), 76 FR 63979 (October 14, 2011) (SR–BYX–2011–026).

[10] *See* Notice, *supra* note 3.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(5).

rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to BATS Trading's affiliation with the Exchange to permit the Exchange to accept inbound orders that BATS Trading routes in its capacity as a facility of BATS, on a pilot basis.[14] The Exchange now seeks to make this pilot permanent. Specifically, the Exchange states it is in compliance with the following limitations and conditions: [15]

- The Exchange shall enter into a plan pursuant to Rule 17d-2 under the Exchange Act with a non-affiliated self-regulatory organization (''SRO'') to relieve the Exchange of regulatory responsibilities for BATS Trading with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and enter into a regulatory contract (''Regulatory Contract'') with a non-affiliated SRO to perform regulatory responsibilities for BATS Trading for unique Exchange rules.
- The Regulatory Contract shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively ''Exceptions'') in which BATS Trading is identified as a participant that has potentially violated Exchange or Commission Rules, and shall require that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which BATS Trading is identified as a participant that has potentially violated Exchange or Commission Rules.
- The Exchange, on behalf of the Corporation, shall establish and maintain procedures and internal controls reasonably designed to ensure that BATS Trading does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated member organizations of the Exchange in connection with the provision of inbound order routing to the Exchange.
- The Exchange may furnish to BATS Trading the same information on the same terms that the Exchange makes available in the normal course of business to any other member organization.

The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to BATS Trading, and has demonstrated that BATS Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage.[16]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[17] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit BATS Trading, in its capacity as a facility of BATS, to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.

The Exchange has proposed four ongoing conditions applicable to BATS Trading's inbound routing activities in its capacity as a facility of BATS, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of BATS Trading,[18] combined with a non-affiliated SRO's monitoring of BATS Trading's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to BATS Trading.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–BYX–2012–006) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9341 Filed 4–17–12; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* BYX Approval Order, 75 FR at 51304.

[15] *See* Notice, 77 FR at 15154.

[16] *See id.*

[17] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR–Amex–2008–62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

[18] This oversight will be accomplished through a 17d–2 Agreement. *See* BYX Approval Order, 75 FR at 51304.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66799; File No. SR–Phlx–2012–38]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to FINRA Fees

April 12, 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 April 11, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Section VII, C to update FINRA fees to mirror the text of The NASDAQ Stock Market LLC (''NASDAQ Stock Market'') and NASDAQ OMX BX, Inc. (''BX'').

The text of the proposed rule change is available on the Exchange's Web site

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* 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 both amend and update the Exchange's FINRA fees on its Pricing Schedule at Section VII, C entitled ''FINRA Fees'' to mirror the rules of the NASDAQ Stock Market and BX. Currently, the Exchange displays all the FINRA fees that are billed and collected by FINRA at Section VII, C on behalf of the Exchange. The Exchange is proposing to replace the relevant text in the Pricing Schedule with text similar to that of NASDAQ Stock Market Rule 7003(a)(1)—(5) [3] and BX Rule 7003(a)(1)—(5).[4] This amendment would serve to (1) conform the Exchange's Pricing Schedule to that of NASDAQ Stock Market and BX rules in order to avoid confusion over similar FINRA fees listed in those rules, however reflected differently on the Phlx Pricing Schedule as compared to the NASDAQ Stock Market and BX Rules with respect to DOJ related costs;[5] and (2) update Phlx's current fees so that the fees comport with a recent amendment to the DOJ pass-through fee,[6] which is billed and collected by FINRA.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by conforming the text of the Exchange's Pricing Schedule regarding certain fees billed and collected by FINRA to that of the NASDAQ Stock Market Rule and BX, to the extent the fees apply to the Exchange, so that there is no confusion as to the amount of fees which are similarly billed and collected by FINRA to members of the various exchanges.

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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, designates the proposal operative upon filing.[12] The proposed rule change is not controversial as it would conform the text of the Exchange's Pricing Schedule to similar rule text on the NASDAQ Stock Market and BX. In addition, the proposed rule change would update the Exchange's Pricing Schedule to make the amount of the FINRA fingerprinting fees displayed on the Pricing Schedule accurate.

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–Phlx–2012–38 on the subject line.

[3] Rule 7003(a)(6) and (b) are specific to NASDAQ Stock Market and not applicable to Phlx. Also the NASDAQ Stock Market rule has a reference to NASD which is being reflected as FINRA in the Exchange's proposed rule text similar to the text of BX Rule 7003.

[4] Rule 7003(a)(6) and (b) are specific to BX and not applicable to Phlx.

[5] The Phlx Pricing Schedule calculates the cost of the FINRA fingerprint processing fee ($13) together with the pass through fee imposed by the United States Department of Justice (''DOJ'') while NASDAQ Stock Market Rule 7003(a)(4) and (5) and BX Rule 7003(a)(4) and (5) only displays the $13 FINRA fingerprint processing fee and does not display the pass-through amount to the DOJ but rather notes such a cost is assessed by FINRA.

[6] FINRA notified its members through an Information Notice that there was a reduction to the DOJ pass-through fee from $17.25 to $14.50. The amounts currently displayed for fingerprint processing fees on Phlx's Pricing Schedule would therefore need to be amended from $30.25 to $27.50 to update the current Pricing Schedule. However, the proposed amendment to the Pricing Schedule would only reference the FINRA fees and would not reference the DOJ pass-through fees therefore obviating the amendment to the proposed text to display the price decrease as the exact DOJ fee would no longer be displayed.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2012–38. 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–2012–38 and should be submitted on or before May 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9290 Filed 4–17–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66798; File No. SR–NYSEArca–2012–27]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Recent Changes to FINRA Rules 7440 and 7450, and To Adopt Recent Changes to FINRA Rule 5320 by Amending Commentary .02 to NYSE Arca Equities Rule 5320 To Require That ETP Holders Report to the Order Audit Trail System Information Barriers Put Into Place by the ETP Holder in Reliance on Commentary .02 to NYSE Arca Equities Rule 5320

April 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 2, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) adopt recent changes to Financial Industry Regulatory Authority, Inc. (''FINRA'') Rules 7440 and 7450, which the Exchange has incorporated by reference in its own rules, and (ii) adopt recent changes to FINRA Rule 5320 by amending Commentary .02 to NYSE Arca Equities Rule 5320 to require that ETP Holders report to the Order Audit Trail System (''OATS'') information barriers put into place by the ETP Holder in reliance on Commentary .02 to NYSE Arca Equities Rule 5320. The text of the proposed rule change is available at the Exchange, *www.nyse.com,* the Commission's Public Reference Room, and the Commission's Web site at *www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) adopt recent changes to FINRA Rules 7440 and 7450, which the Exchange has incorporated by reference in its own rules, and (ii) adopt recent changes to FINRA Rule 5320 by amending Commentary .02 to NYSE Arca Equities Rule 5320 to require that ETP Holders report to OATS information barriers put into place by the ETP Holders in reliance on Commentary .02 to NYSE Arca Equities Rule 5320.

FINRA recently received Commission approval of changes to the order recording and transmission requirements of the OATS rules in FINRA Rules 7440 and 7450.[3] First, FINRA amended FINRA Rule 7440 to require FINRA members relying on the no-knowledge exception in Supplementary Material .02 to FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) to report information to OATS regarding the information barriers adopted by the member in reliance on the exception—FINRA also added this requirement under Supplementary Material .02 to FINRA Rule 5320. Second, FINRA amended FINRA Rule 7440 to extend, to all OATS-eligible securities, the existing requirement to reflect on OATS reports a customer's instruction regarding display of the customer's limit orders—the requirement previously applied only to limit orders involving NMS stocks. Finally, FINRA amended FINRA Rule 7450 to codify the specific time by which OATS reports must be transmitted to FINRA.

The Exchange recently adopted the NYSE Arca Equities Rule 7400 Series, which consists of NYSE Arca Equities Rules 7410 through 7470 and is based substantially on the FINRA Rule 7400 Series.[4] In this regard, NYSE Arca Equities Rules 7440 and 7450

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66021 (December 21, 2011), 76 FR 81551 (December 28, 2011) (SR–FINRA–2011–63) [sic].

[4] *See* Securities Exchange Act Release No. 65544 (October 12, 2011), 76 FR 64406 (October 18, 2011) (SR–NYSEArca–2011–69).

incorporate by reference the order data recording and transmission requirements of FINRA Rules 7440 and 7450, respectively, by requiring ETP Holders and associated persons to comply with FINRA Rules 7440 and 7450 as if those rules were part of the Exchange's rules. Accordingly, the Exchange hereby proposes to adopt the changes to FINRA Rules 7440 and 7450 that were approved pursuant to SR–FINRA–2011–063.[5]

The Exchange also recently adopted NYSE Arca Equities Rule 5320, which is substantially the same as FINRA Rule 5320 and prohibits trading ahead of customer orders with certain exceptions, including large order and institutional account exceptions, a no-knowledge exception, a riskless principal exception, an intermarket sweep order exception, and odd lot and bona fide error transaction exceptions.[6] The Exchange hereby proposes to adopt as Commentary .02(b) to NYSE Arca Equities Rule 5320 the same language that was approved pursuant to SR–FINRA–2011–063 as Supplementary Material .02(c) to FINRA Rule 5320.[7] Specifically, if an ETP Holder implements and utilizes appropriate information barriers in reliance on the no-knowledge exception provided under Commentary .02 to NYSE Arca Equities Rule 5320, the ETP Holder must uniquely identify such information barriers as prescribed in FINRA Rule 7440(b)(19).

The no-knowledge exception in Commentary .02 to NYSE Arca Equities Rule 5320 provides that if an ETP Holder implements and uses an effective system of internal controls—such as appropriate information barriers—that operate to prevent one trading unit from obtaining knowledge of customer orders held by a separate trading unit, that other trading unit may trade in a proprietary capacity at prices that would satisfy the customer orders held by the separate, walled-off trading unit. Through the use of OATS, FINRA will be able to ascertain, on an automated basis, those ETP Holders claiming the no-knowledge exception.[8] This will reduce the potential for ''false positive'' alerts by allowing FINRA to account for the existence of information barriers when running automated surveillance patterns designed to identify inappropriate trading ahead of customer orders. These new requirements should substantially reduce the number of ''false positives'' that are identified through automated surveillance patterns by permitting FINRA to account for information barriers when trading ahead may otherwise be indicated.

The Exchange proposes to implement the changes proposed herein on the same date that FINRA implements the changes approved pursuant to SR–FINRA–2011–063, thereby eliminating the potential for different regulatory requirements between common members.[9]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing greater harmonization between NYSE Arca Equities Rules and FINRA Rules of similar substance and purpose. This would result in less burdensome and more efficient regulatory compliance, which would foster cooperation and coordination with persons engaged in facilitating transactions in securities and promote the protection of investors and the public interest. The changes proposed herein are also designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade by ensuring that FINRA Rules incorporated by reference in the NYSE Arca Equities Rules and rules that are common to both NYSE Arca Equities and FINRA remain consistent after amendments to the particular FINRA Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may become effective on the same date that FINRA implements the changes to FINRA Rules 7440, 7450, and

[5] The Exchange notes that the approved changes to FINRA Rules 7440 and 7450 that the Exchange proposes to adopt would be applicable only to ETP Holders that are also FINRA members. In particular, the changes relate to cross-references to FINRA Rule 5320, and for the Exchange, to NYSE Arca Equities Rule 5320, which is not applicable to Proprietary Trading Firms, as defined in NYSE Arca Equities Rule 7410(p), because they do not have customers and therefore do not need to maintain information barriers.

[6] *See* Securities Exchange Act Release No. 65166 (August 18, 2011), 76 FR 53013 [sic] (August 24, 2011) (SR–NYSEArca–2011–57).

[7] For consistency with Exchange rules, the Exchange proposes to change references from ''members'' in Supplementary Material .02(c) to FINRA Rule 5320 to ''ETP Holders'' in proposed Commentary .02(b) to NYSE Arca Equities Rule 5320. The Exchange also proposes the designate the existing text of Commentary.02 to NYSE Arca Equities Rule 5320 as paragraph (a) thereto.

[8] All Exchange ETP Holders that are subject to NYSE Arca Equities Rule 5320 are also FINRA members, and FINRA reviews compliance with that rule pursuant to an allocation plan under Rule 17d–2 of the Securities Exchange Act of 1934.

[9] FINRA has announced that it will implement the changes on April 16, 2012. *See http://www.finra.org/Industry/Compliance/MarketTransparency/OATS/OATSReport/P125612.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

5320.[15] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, designates the proposal operative upon filing.[16] Waiving the 30-day operative delay will enable the Exchange to implement the proposed rule change on the same day that FINRA implements the changes to its rules on which the proposed rule change is based, thereby eliminating the potential for different regulatory requirements for members of both FINRA and the Exchange.

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–NYSEArca–2012–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the New York Stock Exchange LLC's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–27, and should be submitted on or before May 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9289 Filed 4–17–12; 8:45 am]

BILLING CODE 8011–01–P

[15] FINRA has announced that it will implement the changes on April 16, 2012. *See supra* note 9.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66797; File No. SR–NYSE–2012–09]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Recent Changes to FINRA Rules 7440 and 7450, and To Adopt Recent Changes to FINRA Rule 5320 by Amending Supplementary Material .02 to NYSE Rule 5320 To Require That Member Organizations Report to the Order Audit Trail System Information Barriers Put Into Place by the Member Organization in Reliance on Supplementary Material .02 to NYSE Rule 5320

April 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2012, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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 (i) adopt recent changes to Financial Industry Regulatory Authority, Inc. (''FINRA'') Rules 7440 and 7450, which the Exchange has incorporated by reference in its own rules, and (ii) adopt recent changes to FINRA Rule 5320 by amending Supplementary Material .02 to NYSE Rule 5320 to require that member organizations report to the Order Audit Trail System (''OATS'') information barriers put into place by the member organization in reliance on Supplementary Material .02 to NYSE Rule 5320. The text of the proposed rule change is available at the Exchange, *www.nyse.com,* the Commission's Public Reference Room, and the Commission's Web site at *www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) adopt recent changes to FINRA Rules 7440 and 7450, which the Exchange has incorporated by reference in its own rules, and (ii) adopt recent changes to FINRA Rule 5320 by amending Supplementary Material .02 to NYSE Rule 5320 to require that member organizations report to OATS information barriers put into place by the member organizations in reliance on Supplementary Material .02 to NYSE Rule 5320.

FINRA recently received Commission approval of changes to the order recording and transmission requirements of the OATS rules in

FINRA Rules 7440 and 7450.[3] First, FINRA amended FINRA Rule 7440 to require FINRA members relying on the no-knowledge exception in Supplementary Material .02 to FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) to report information to OATS regarding the information barriers adopted by the member in reliance on the exception—FINRA also added this requirement under Supplementary Material .02 to FINRA Rule 5320. Second, FINRA amended FINRA Rule 7440 to extend, to all OATS-eligible securities, the existing requirement to reflect on OATS reports a customer's instruction regarding display of the customer's limit orders—the requirement previously applied only to limit orders involving NMS stocks. Finally, FINRA amended FINRA Rule 7450 to codify the specific time by which OATS reports must be transmitted to FINRA.

The Exchange recently adopted the NYSE Rule 7400 Series, which consists of NYSE Rules 7410 through 7470 and is based substantially on the FINRA Rule 7400 Series.[4] In this regard, NYSE Rules 7440 and 7450 incorporate by reference the order data recording and transmission requirements of FINRA Rules 7440 and 7450, respectively, by requiring member organizations and associated persons to comply with FINRA Rules 7440 and 7450 as if those rules were part of the Exchange's rules. Accordingly, the Exchange hereby proposes to adopt the changes to FINRA Rules 7440 and 7450 that were approved pursuant to SR–FINRA–2011–063.[5]

The Exchange also recently adopted NYSE Rule 5320, which is substantially the same as FINRA Rule 5320 and prohibits trading ahead of customer orders with certain exceptions, including large order and institutional account exceptions, a no-knowledge exception, a riskless principal exception, an intermarket sweep order exception, and odd lot and bona fide error transaction exceptions.[6] The Exchange hereby proposes to adopt as Supplementary Material .02(b) to NYSE Rule 5320 the same language that was approved pursuant to SR–FINRA–2011–063 as Supplementary Material .02(c) to FINRA Rule 5320.[7] Specifically, if a member organization implements and utilizes appropriate information barriers in reliance on the no-knowledge exception provided under Supplementary Material .02 to NYSE Rule 5320, the member organization must uniquely identify such information barriers as prescribed in FINRA Rule 7440(b)(19).

The no-knowledge exception in Supplementary Material .02 to NYSE Rule 5320 provides that if a member organization implements and uses an effective system of internal controls—such as appropriate information barriers—that operate to prevent one trading unit from obtaining knowledge of customer orders held by a separate trading unit, that other trading unit may trade in a proprietary capacity at prices that would satisfy the customer orders held by the separate, walled-off trading unit. Through the use of OATS, FINRA will be able to ascertain, on an automated basis, those member organizations claiming the no-knowledge exception.[8] This will reduce the potential for ''false positive'' alerts by allowing FINRA to account for the existence of information barriers when running automated surveillance patterns designed to identify inappropriate trading ahead of customer orders. These new requirements should substantially reduce the number of ''false positives'' that are identified through automated surveillance patterns by permitting FINRA to account for information barriers when trading ahead may otherwise be indicated.

The Exchange proposes to implement the changes proposed herein on the same date that FINRA implements the changes approved pursuant to SR–FINRA–2011–063, thereby eliminating the potential for different regulatory requirements between common members.[9]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing greater harmonization between NYSE Rules and FINRA Rules of similar substance and purpose. This would result in less burdensome and more efficient regulatory compliance, which would foster cooperation and coordination with persons engaged in facilitating transactions in securities and promote the protection of investors and the public interest. The changes proposed herein are also designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade by ensuring that FINRA Rules incorporated by reference in the NYSE Rules and rules that are common to both NYSE and FINRA remain consistent after amendments to the particular FINRA Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[3] *See* Securities Exchange Act Release No. 66021 (December 21, 2011), 76 FR 81551 (December 28, 2011) (SR–FINRA–2011–63) [sic].

[4] *See* Securities Exchange Act Release No. 65523 (October 7, 2011), 76 FR 64154 (October 17, 2011) (SR–NYSE–2011–49).

[5] The Exchange notes that the approved changes to FINRA Rules 7440 and 7450 that the Exchange proposes to adopt would be applicable only to Exchange member organization [sic] that are also FINRA members. In particular, the changes relate to cross-references to FINRA Rule 5320, and for the Exchange, to NYSE Rule 5320, which is not applicable to Proprietary Trading Firms, as defined in Rule 7410(p), because they do not have customers and therefore do not need to maintain information barriers.

[6] *See* Securities Exchange Act Release No. 65164 (August 18, 2011), 76 FR 53015 (August 24, 2011) (SR–NYSE–2011–43).

[7] For consistency with Exchange rules, the Exchange proposes to change references from ''members'' in Supplementary Material .02(c) to FINRA Rule 5320 to ''member organizations'' in proposed Supplementary Material .02(b) to NYSE Rule 5320. The Exchange also proposes to designate the existing text of Supplementary Material .02 to NYSE Rule 5320 as paragraph (a) thereto.

[8] All Exchange member organizations that are subject to NYSE Rule 5320 are also FINRA members, and FINRA reviews compliance with that rule pursuant to an allocation plan under Rule 17d–2 of the Securities Exchange Act of 1934.

[9] FINRA has announced that it will implement the changes on April 16, 2012. *See http://www.finra.org/Industry/Compliance/MarketTransparency/OATS/OATSReport/P125612.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may become effective on the same date that FINRA implements the changes to FINRA Rules 7440, 7450, and 5320.[15] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, designates the proposal operative upon filing.[16] Waiving the 30-day operative delay will enable the Exchange to implement the proposed rule change on the same day that FINRA implements the changes to its rules on which the proposed rule change is based, thereby eliminating the potential for different regulatory requirements for members of both FINRA and the Exchange.

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–NYSE–2012–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–09, and should be submitted on or before May 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] FINRA has announced that it will implement the changes on April 16, 2012. *See supra* note 9.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66794; File No. SR–BATS–2012–015]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

April 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the ''Options Pricing'' section of its fee schedule to: (i) Delineate fees and rebates applicable to executions of options classes subject to the penny pilot program as described below (''Penny Pilot Securities'') from the fees and rebates for all other options classes; (ii) modify the fees charged by the Exchange to remove liquidity from Exchange's options platform (''BATS Options'') in Penny Pilot Securities; (iii) modify the rebates provided by the Exchange for Customer [6] orders that add liquidity to BATS Options; (iv) adopt fees and rebates for executions in non-Penny Pilot Securities; and (v) modify the Quoting Incentive Program (''QIP''), which is a program intended to incentivize sustained, aggressive quoting on BATS Options. The Exchange also proposes minor structural changes to the Options Pricing section of the Exchange's fee schedule, including movement and re-numbering of certain footnotes.

(i) Penny Pilot/Non-Penny Pilot Pricing

The Exchange proposes to adopt different fees for those options classes that qualify as Penny Pilot Securities pursuant to Exchange Rule 21.5, Interpretation and Policy .01 and all other options classes. Delineating between classes in Penny Pilot Securities and all other options classes is consistent with pricing structures at most other options exchanges, and recognizes the fundamental difference in liquidity and quoted spreads between options that are quoted in penny increments and those that are not. In addition to the specific fees outlined below, the Exchange proposes to adopt a definition for Penny Pilot Securities, defining such options as those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01, which is the Exchange Rule that codifies the penny pilot program for BATS Options.

(ii) Fees To Remove Liquidity

The Exchange currently charges $0.44 per contract for Professional,[7] Firm and Market Maker [8] orders that remove liquidity from the BATS Options order book. The Exchange proposes to raise the fee to $0.45 per contract for Professional, Firm and Market Maker orders that remove liquidity from the BATS Options order book and to apply this fee to all Penny Pilot Securities. At the same time, however, the Exchange proposes to apply the ''Grow with Us'' pricing program to Professional, Firm and Market Maker orders that remove liquidity from the BATS Options order book in Penny Pilot Securities. Accordingly, if a Member shows a minimum of 5 basis points total consolidated volume (''TCV'') [9] improvement over the Member's previous highest monthly TCV on BATS Options, or ''High Water Mark,'' then the Exchange will continue to charge such Member $0.44 per contract, rather than the increased fee of $0.45 per contract, for Professional, Firm and Market Maker orders in Penny Pilot Securities. The Exchange has defined High Water Mark as the greater of a Member's fourth quarter 2011 TCV or a Member's best monthly TCV on BATS Options thereafter.[10]

With respect to Customer orders, the Exchange currently charges standard fees of $0.44 per contract for Customer orders that remove liquidity from BATS Options, subject to potential reduction for any Member with an average daily volume (''ADV'') [11] of 0.30% or more of average TCV or ADV equal to or greater than 1% average TCV on BATS Options, respectively. The Exchange does not propose to modify its standard fee of $0.44 per contract for Customer orders that remove liquidity from BATS Options. The Exchange is proposing, however, to increase the fees for Customer orders that remove liquidity from BATS Options for Members that meet the qualifications for a discounted fee pursuant to the tiered pricing structure, to modify the pricing for Members that qualify for Grow with Us pricing, and to apply this pricing to Penny Pilot Securities only, as described below.

Pursuant to the Exchange's tiered pricing structure Members can realize lower liquidity removal fees if such Members have an ADV equal to or greater than 0.30% of average TCV. For Members reaching this volume threshold, the Exchange currently charges a fee of $0.36 per contract for Customer orders that remove liquidity from BATS Options. The Exchange proposes to increase the fee for Members that have an ADV equal to or greater than 0.30% of average TCV to $0.40 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities. Similarly, Members can realize lower liquidity removal fees if such Members have an ADV equal to or greater than 1% of average TCV. For Members reaching this volume threshold, the Exchange currently charges a fee of $0.28 per contract for Customer orders that remove liquidity from BATS Options. The Exchange proposes to increase the fee for Members that have an ADV equal to or greater than 1% of average TCV to $0.36 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities.

In addition, pursuant to the Grow with Us pricing program, the Exchange provides a Member with one-half of the economic benefit such Member would achieve if such Member were in the next highest volume tier to the extent such Member shows a minimum of 5 basis points TCV improvement over the Member's High Water Mark. The Grow with Us pricing program, as described above, currently applies to various fees and rebates, including Customer orders

[6] As defined on the Exchange's fee schedule, a ''Customer'' order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (''OCC''), except for those designated as ''Professional''.

[7] As defined in Rule 16.1, the term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] As set forth on the Exchange's fee schedule, and consistent with the definition of a Customer order, classification as a ''Firm'' or ''Market Maker'' order depends on the identification by a Member of the applicable clearing range at the OCC.

[9] As defined on the Exchange's fee schedule, TCV is total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

[10] For example, assume that for the fourth quarter of 2011, a Member has an ADV of 0.10% of average TCV. Such Member would not qualify for volume tier pricing applicable to Members with an ADV of 0.30% of average TCV. However, if, in April of 2012, such Member achieves an average TCV of 0.15% on BATS Options, such Member will receive one-half of the economic benefit such Member would receive if the Member had reached the 0.30% TCV volume tier and the Member's new High Water Mark will now be 0.15%.

[11] As defined on the Exchange's fee schedule, ADV is average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. The fee schedule also provides that routed contracts are not included in ADV calculation.

that remove liquidity. The Exchange proposes to modify the Grow with Us fees to account for the changes proposed above. Specifically, a Member that does not qualify for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but achieves at least a 5 basis point increase over its previous High Water Mark is currently assessed a fee of $0.40 per contract for Customer orders that remove liquidity from BATS Options (i.e., halfway between the standard fee of $0.44 per contract and the fee of $0.36 charged to Members that reach the 0.30% TCV tier). Due to the proposed changes described above, the Exchange proposes to modify this fee to $.042 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities (i.e., halfway between the standard fee of $0.44 per contract and the fee of $0.40 charged to Members that reach the 0.30% TCV tier). Similarly, a Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but not the 1% of average TCV tier that achieves at least a 5 basis point increase over its previous High Water Mark will be assessed a fee of $0.38 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities (i.e., halfway between the $0.40 per contract charged to Members that reach the 0.30% TCV tier and the $0.36 per contract charged to Members that reach the 1% TCV tier).

(iii) Customer Rebates for Adding Liquidity

The Exchange currently provides a rebate of $0.30 per contract for Customer orders that add liquidity to the BATS Options order book. The Exchange proposes to maintain this standard rebate but to further increase rebates to Members pursuant to volume thresholds analogous to those applied to fees for removing liquidity. First, the Exchange proposes to increase the rebate applicable to Members with an ADV equal to or greater than 0.30% of average TCV from a rebate of $0.40 per contract to a rebate of $0.42 per contract for Customer orders that add liquidity to the BATS Options order book. Second, Exchange proposes to adopt a volume tier applicable to Members with an ADV equal to or greater than 1% of average TCV from a rebate of $0.42 per contract to a rebate of $0.44 per contract for Customer orders that add liquidity to the BATS Options order book. Finally, the Exchange proposes to modify its Grow with Us pricing program to Customer orders that add liquidity in order to ensure that all Grow with Us rebates are one-half of the applicable economic benefit received by the next tier. Accordingly, a Member that does not qualify for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but achieves at least a 5 basis point increase over its previous High Water Mark will be provided a rebate of $0.36 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities (i.e., halfway between the standard rebate of $0.30 per contract and the rebate of $0.42 per contract provided to Members that reach the 0.30% TCV tier), which is an increase from the current rebate of $0.35 per contract. Similarly, a Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but not the 1% of average TCV tier that achieves at least a 5 basis point increase over its previous High Water Mark will be provided a rebate of $0.43 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities (i.e., halfway between the $0.42 per contract provided to Members that reach the 0.30% TCV tier and the $0.44 per contract provided to Members that reach the 1% TCV tier).

The Exchange is not proposing to modify the rebates provided for Professional, Firm and Market Maker orders, other than to make clear that such rebates on the fee schedule differ between those provided with respect to Penny Pilot Securities and all other securities.

(iv) Pricing for Non-Penny Pilot Securities

As noted above, the Exchange proposes to adopt separate pricing for Non-Penny Pilot Securities. Specifically, the Exchange proposes to adopt a fee of $0.75 per contract for Customer orders that remove liquidity from the BATS Options order book in non-Penny Pilot Securities and a rebate of $0.75 per contract for Customer orders that add liquidity to the BATS Options order book in non-Penny Pilot Securities. The Exchange proposes to adopt a fee of $0.80 per contract for Professional, Firm and Market Maker orders that remove liquidity from the BATS Options order book in non-Penny Pilot Securities and a rebate of $0.70 per contract for Professional, Firm and Market Maker orders that add liquidity to the BATS Options order book in non-Penny Pilot Securities. The Exchange will apply additive rebates that are earned through the QIP (as described below) and/or the Exchange's NBBO Setter Program [12] to executions in non-Penny Pilot Securities. However the Exchange is not currently proposing to adopt other tiered pricing for non-Penny Pilot Securities.

As described in further detail below, the Exchange's proposal to implement the above-described fees is intended to attract better priced liquidity to the Exchange by incenting liquidity providers to post aggressively priced liquidity on the Exchange with an enhanced rebate structure. The Exchange believes that the differences that can be achieved by narrowing spreads in non-Penny Pilot Securities will justify the increased fees to remove liquidity.

(v) Modification to Quoting Incentive Program

BATS Options offers a Quoting Incentive Program (''QIP''), through which Professional, Firm and Market Maker orders receive a rebate of $0.05 per contract, in addition to any other applicable liquidity rebate, for executions subject to the QIP. Qualifying Customer order executions in products subject to the QIP currently receive an additional rebate of $0.03 per contract. The Exchange proposes to reduce the rebate for Customer orders receiving executions in products subject to the QIP from an additional rebate of $0.03 per contract to an additional rebate of $0.01 per contract. This modification in pricing will allow the Exchange to increase the tiered rebate structure for Customer orders as described above, which will result in increases of either $0.01 or $0.02 per contract on all executions in Penny Pilot Securities for Members reaching any volume tier or qualifying for Grow with Us pricing.

To qualify for the QIP a BATS Options Market Maker must be at the NBB or NBO 60% of the time for series trading between $0.03 and $5.00 for the front three (3) expiration months in that underlying during the current trading month. A Member not registered as a BATS Options Market Maker can also qualify for the QIP by quoting at the NBB or NBO 70% of the time in the same series. The Exchange proposes to add additional clarity regarding the QIP qualification by making clear that $0.03 and $5.00 price range qualification is determined by the last trade in an option series each day. Option series which do not have an execution are removed from the following day's Quoting Incentive Program calculations.

[12] The NBBO Setter Program is a program that provides additional rebates for executions resulting from orders that add liquidity that set either the NBB or NBO.

All other aspects of the QIP currently in place will remain the same. As is true under the current operation of the QIP, the Exchange will determine whether a Member qualifies for QIP rebates at the end of each month by looking back at each Member's (including BATS Options Market Makers) quoting statistics during that month. If at the end of the month a Market Maker meets the 60% criteria or a Member that is not registered as a Market Maker meets the 70% criteria, the Exchange will provide the additional rebate for all executions subject to the QIP executed by that Member during that month. The Exchange will provide Members with a report on a daily basis with quoting statistics so such Members can determine whether or not they are meeting the QIP criteria. The Exchange is not proposing to impose any ADV requirements in order to qualify for the QIP at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[13] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[14] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that continuing to provide additional financial incentives to Members that demonstrate a 5 basis point increase over their previous High Water Mark offers an additional, flexible way to achieve financial incentives from the Exchange and encourages Members to add increasing amounts of liquidity to BATS Options each month. The Grow with Us pricing program thereby rewards a Member's growth patterns. Such increased volume increases potential revenue to the Exchange, and will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange. The increased liquidity also benefits all investors by deepening the BATS Options liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Grow with Us program is also fair and equitable in that it is available to all Members and will expand the applicability of the Exchange's tiered pricing structure, even for Members that do not meet the Exchange's volume based tiers. The increase to fees for Professional, Firm and Market Maker orders that remove liquidity in Penny Pilot Securities is fair and equitable because it will allow the Exchange to offer a financial incentive to those Members who qualify for the Grow with Us program based on increased liquidity on BATS Options and such Members will not realize any increase to fees. The fee increase is reasonable in that it is a small increase and the fee to remove liquidity from BATS Options for Professional, Firm and Market Maker orders is still equivalent to the standard fee charged by other markets with similar fee structures, such as NYSE Arca Options and the Nasdaq Options Market (''NOM'').

Volume-based rebates such as the ones maintained by the Exchange have been widely adopted in the cash equities markets and are increasingly in use by the options exchanges, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. Accordingly, the Exchange believes that the continued offering of volume-based rebates for Customer orders in Penny Pilot Securities is not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality. Similarly, the Exchange believes that continuing to base its tiered fee structure based on overall TCV, rather than a static number of contracts irrespective of overall volume in the options industry, is a fair and equitable approach to pricing.

Despite the increases in fees for Customer orders in Penny Pilot Securities that remove liquidity applicable to Members that meet one of the Exchange's tier levels or qualify for Grow with Us pricing, the Exchange believes that its proposed fee structure is reasonable as the Exchange's standard fees generally still remain equivalent to or slightly lower than standard fees charged by other markets with similar fee structures, such as NYSE Arca Options and NOM. Further, the Exchange believes that the increases are fair and equitable because the various programs offered by the Exchange to receive reduced fees and enhanced rebates provide all Members with several different ways to offset the increase in fees or receive a reduction in fees. The increase in fees is also reasonable because the Exchange has also proposed to increase the rebates available for Customer orders from Members that qualify for volume-based tier or the Grow with Us program. The increase to rebates for Customer orders in Penny Pilot Securities is reasonable as it will permit certain Customer orders to qualify for higher rebates, and is fair and equitable because the volume-based tiers are available to all Members on an equal basis. As noted above, the Exchange believes that such volume-based tiers are fair and equitable and not unreasonably discriminatory because they are consistent with the overall goals of enhancing market quality. Also due to the increased levels of rebates for Customer orders in Penny Pilot Securities, the Exchange believes that the proposed modification to the Quoting Incentive Program is fair and equitable and not unreasonably discriminatory. Although the proposed QIP rebate for qualifying Customer orders is slightly lower than is currently offered and will continue to be lower than the QIP rebate provided to Professional, Firm and Market Maker orders, the Exchange believes that this distinction is reasonable and not unreasonably discriminatory because of the offsetting increase to rebates on Customer orders. The Exchange also believes that continuing to maintain a slightly lower threshold for meeting the QIP for registered BATS Options Market Makers appropriately incentivizes Members of BATS Options to register with the Exchange as Options Market Makers. While the Exchange does wish to allow participation in the QIP by all Members, the Exchange believes that registration by additional Members as Market Makers will help to continue to increase the breadth and depth of quotations available on the Exchange. The Exchange notes that in addition to the fact that the QIP is available to all Members, the proposal is not unfairly discriminatory despite a slightly higher quotation requirement for non-Market Makers due to the fact that registration as a BATS Options Market Maker is equally available to all Members.

The Exchange believes that its proposed fees for non-Penny Pilot

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

Securities are reasonable in light of the benefits to Members to the extent the corresponding rebates, which are significantly higher than rebates available from the Exchange's competitors, incentivize aggressive quoting that will result in better execution prices, as described in further detail below. The Exchange also believes that providing financial incentives to achieve aggressive quoting and incentivize liquidity providers to narrow the spread while charging more to those who realize the economic benefit of that narrower spread is a fair and equitable approach to pricing. Finally, the Exchange notes that in non-Penny Pilot Securities it is charging slightly more for, and rebating slightly less to, non-Customer orders than Customer orders. The Exchange believes that this proposed pricing structure for non-Penny Pilot Securities is not unreasonably discriminatory because it accounts for the difference of assumed information and sophistication level between the different trading capacities. Since Professional, Firm and Market Maker capacity members are assumed to have more informed (and hence less desirable to counterparties) orders, those orders have a slightly higher transaction cost associated with them. The Exchange further notes that the charges and rebates to all non-Customer orders is equivalent regardless of capacity and therefore non-discriminatory.

In the current U.S. options market, many of the contracts are quoted in pennies. Under this pricing structure, the minimum penny tick increment equates to a $1.00 economic value difference per contract, given that a single standardized U.S. option contract covers 100 shares of the underlying stock. Where contracts are quoted in $0.05 increments, the value per tick is $5.00 in proceeds to the investor transacting in these contracts. Liquidity rebate and access fee structures on the make-take exchanges, including BATS, for securities quoted in penny increments are commonly in the $0.30 to $0.45 range. A $0.30 rebate in a penny quoted security is a rebate equivalent to 30% of the value of the minimum tick. A $0.45 charge in a penny quoted security is a charge equivalent to 45% of the value of that minimum tick. In other words, in penny quoted securities, where the price is improved by one tick with an access fee of $0.45, an investor paying to access that quote is still $0.55 better off than trading at the wider spread, even without the access fee ($1.00 of price improvement − $0.45 access fee = $0.55 better economics). This math is equally true for securities quoted in wider increments. Rebates and access fees near the $0.80 level equate to only 20% of the value of the minimum tick. An investor transacting a single contract in a non-penny quoted security quoted a single tick tighter than the rest of the market, and paying an access fee of $0.80, is receiving economic benefit of $4.20 ($0.05 improved tick = $5.00 in proceeds − $0.80 access fee = $4.20). The Exchange believes that encouraging liquidity providers to quote more aggressively and narrow the spread in non-Penny Pilot Securities will benefit investors by improving the overall economics of the resulting transactions that occur on the Exchange, even if the access fee paid in connection with such transactions is higher. Accordingly, the Exchange believes that the proposed fees and rebates for non-Penny Pilot Securities are reasonable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act [15] and Rule 19b–4(f)(2) thereunder,[16] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2012–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2012–015. 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–BATS–2012–015 and should be submitted on or before May 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9286 Filed 4–17–12; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66790; File No. SR–ISE–2012–25]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates

April 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 4, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend the threshold levels and rebate amounts for Qualified Contingent Cross (''QCC'') orders and Solicitation orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the threshold levels and rebate amounts for QCC orders and Solicitation orders to further encourage Members to submit greater numbers of QCC orders and Solicitation orders to the Exchange. The Exchange currently provides a rebate to Members who reach a certain volume threshold in QCC orders and/or Solicitation orders during a month.[3] Once a Member reaches the volume threshold, the Exchange provides a rebate to that Member for all of its QCC and Solicitation contracts traded for that month. The rebate is paid to the Member entering a qualifying order, i.e., a QCC order and/or a Solicitation order. The rebate applies to QCC orders and Solicitation orders in all symbols traded on the Exchange. Additionally, the threshold levels are based on the originating side so if, for example, a Member submits a Solicitation order for 1,000 contracts, all 1,000 contracts are counted to reach the established threshold even if the order is broken up and executed with multiple counter parties.

The current volume threshold and corresponding rebate per contract is:

Originating contract sides	Rebate per contract
0–199,999	$0.00
200,000–999,999	0.05
1,000,000–1,599,999	0.08
1,600,000+	0.10

The Exchange now proposes to amend the current tiers by: (1) Adjusting the second tier (200,000–999,999 contracts) so that it becomes 200,000–499,999 contracts and increasing the rebate for this tier from $0.05 per contract to $0.07 per contract; (2) adopting a new tier for 500,000–699,999 contracts with a corresponding rebate of $0.08 per contract; (3) adopting a new tier for 700,000–999,999 contracts with a corresponding rebate of $0.09 per contract; and (4) adjusting the last tier (1,600,000+ contracts) so that it becomes 1,000,000+ contracts and increasing the rebate for this last tier from $0.10 to $0.11 per contract. With the proposed changes to the tiers, which reflect the recent decline in options trading volume, the Exchange is attempting to strike the right balance between the number of qualifying contracts and its corresponding rebate to ensure that the incentive program achieves its intended purpose of attracting greater order flow from its Members.

With the proposed amended tiers, the volume threshold and corresponding rebate per contract will be as follows:

Originating contract sides	Rebate per contract
0–199,999	$0.00
200,000–499,999	0.07
500,000–699,999	0.08
700,000–999,999	0.09
1,000,000+	0.11

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act [4] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act [5] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange Members. The Exchange believes that the proposed fee change will generally allow the Exchange and its Members to better compete for order flow and thus enhance competition. Specifically, the Exchange believes that its proposal, which among other things, lowers the threshold level for Members to qualify for the highest per contract rebate payable, is reasonable as it will encourage Members who direct their QCC and Solicitation orders to the Exchange to continue to do so instead of sending this order flow to a competing exchange. The Exchange believes that with the proposed amended tiers, which provides for additional volume thresholds, more Members are now likely to qualify for higher rebates for sending their QCC and Solicitation orders to the Exchange.

The Exchange notes that it currently has other incentive programs to promote and encourage growth in specific business areas. For example, the Exchange has lower fees (or no fees) for customer orders; [6] and tiered pricing that reduces rates for market makers based on the level of business they bring to the Exchange.[7] This proposed rule change targets a particular segment in which the Exchange seeks to attract

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release Nos. 65087 (August 10, 2011), 76 FR 50783 (August 16, 2011) (SR–ISE–2011–47); 65583 (October 18, 2011), 76 FR 65555 (October 21, 2011) (SR–ISE–2011–68); 65705 (November 8, 2011), 76 FR 70789 (November 15, 2011) (SR–ISE–2011–70); 65898 (December 6, 2011), 76 FR 77279 (December 12, 2011) (SR–ISE–2011–78); and 66169 (January 17, 2012), 77 FR 3295 (January 23, 2012) (SR–ISE–2012–01).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] For example, the customer fee is $0.00 per contract for products other than Singly Listed Indexes, Singly Listed ETFs and FX Options. For Singly Listed Options, Singly Listed ETFs and FX Options, the customer fee is $0.18 per contract. The Exchange also currently has an incentive plan in place for certain specific FX Options which has its own pricing. *See* ISE Schedule of Fees.

[7] The Exchange currently has a sliding scale fee structure that ranges from $0.01 per contract to $0.18 per contract depending on the level of volume a Member trades on the Exchange in a month. *See* ISE Schedule of Fees.

greater order flow. The Exchange further believes that the rebate currently in place for QCC and Solicitation orders is reasonable because it is designed to give Members who trade a minimum of 200,000 qualifying contracts in QCC and Solicitation orders on the Exchange a benefit by way of a lower transaction fee. As noted above, once a Member reaches an established volume threshold, all of the trading activity in the specified order type by that Member will be subject to the corresponding rebate.

The Exchange also believes that its rebate program for QCC and Solicitation orders is equitable because it would uniformly apply to all Members engaged in QCC and Solicitation trading in all option classes traded on the Exchange. The Exchange further believes that its fees and credits remain competitive with fees charged by other exchanges and therefore are reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The QCC and Solicitation rebate program employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[8] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2012–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–25. 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–ISE–2012–25 and should be submitted on or before May 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9283 Filed 4–17–12; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66793; File No. SR–ISE–2012–27]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend an Existing Fee Cap Program and Related Service Fee

April 12, 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 April 2, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 ISE is proposing to amend an existing fee cap program and a related service fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently has a fee cap program that, subject to certain exclusions, is applicable across all products traded on ISE.[3] The fee cap currently applies to transactions executed in a member's proprietary account. The fee cap also applies to crossing transactions for the account of entities affiliated with a member. That is, the cap applies to a member's crossing transactions even if the member executes crosses in the account of an affiliate, rather than the member's own account.

Under the fee cap program, the Exchange caps proprietary transaction fees in all products traded on ISE, in the aggregate, at $100,000 per month per member, with certain exclusions which are noted below. All proprietary transactions, including non-ISE market maker contracts that are part of a crossing transaction, are eligible towards the fee cap. Volume from regular and complex orders, as well as Facilitation Mechanism, Price Improvement Mechanism, Solicited Order Mechanism, Block Order Mechanism and Qualified Contingent Cross (''QCC'') orders,[4] also counts towards the fee cap.

In addition to the fee cap, ISE also currently has a service fee of $0.01 per side on all transactions that are eligible for the fee cap. The service fee applies once a member reaches the fee cap level and applies to every contract side included in and above the fee cap. A member who does not reach the monthly fee cap is not charged the service fee. Additionally, the service fee is not calculated in reaching the fee cap. Once the fee cap is reached, the service fee applies to both proprietary and other account designations[5] in all ISE products in addition to those transactions that were included in reaching the fee cap. The service fee, when charged for volume above the cap when no other transaction fees are collected, was instituted to defray the Exchange's costs of providing services to members, which include trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange.

In calculating the fee cap, the Exchange currently excludes the following:)[6] (1) Any surcharge fee charged by the Exchange on licensed products,[7] (2) fees from Non-ISE Market Maker volume not related to an affiliated member's crossing activity, (3) the fee for responses to special orders[8] in all products, (4) the maker and taker fees charged by the Exchange for complex orders[9] for certain option classes,[10] and (5) the taker fees charged by the Exchange for regular orders[11] for the Select Symbols.

The Exchange's current fee cap is functionally similar to a ''Multiply-Listed Option Fee Cap'' in place at the CBOE[12] and a ''Firm Related Equity Option Cap'' in place at NASDAQ OMX PHLX, Inc. (''PHLX'').[13] Since its inception, the fee cap has served its intended purpose of attracting order flow to the Exchange. However, in response to the pricing competition prevalent across the options markets today, the Exchange now proposes to make changes to the current fee cap program that, once adopted, will allow members to continue to benefit from a fee cap while benefitting the Exchange by way of attracting increased and targeted order flow.

Specifically, the Exchange proposes to make four changes to its current fee cap program. First, the Exchange proposes to lower the cap from $100,000 to $75,000 per member per month. The proposal to lower the cap amount will enable the Exchange to better compete with fee caps that are currently in place at other exchanges. For example, CBOE and PHLX both currently have their fee caps at $75,000 per month.

Second, the Exchange proposes to limit the fee cap to only trades executed in the Exchange's Facilitation Mechanism, Price Improvement Mechanism, Solicited Order Mechanism and Block Order Mechanism and to Qualified Contingent Cross (''QCC'') orders. These orders are generally known as crossing orders. For the sake of clarity, the Exchange proposes to define crossing orders in the footnotes applicable to the fee cap. The Exchange believes the proposal to limit the cap to these order types will simplify the Exchange's fees and allow it to better compete for trading volume that contributes to fee caps at other exchanges. The Exchange also believes the proposal will make it easier for members to track their fee cap-eligible trading activity. To reflect change, the Exchange proposes to remove what was previously footnote 2 on page 17 of the Exchange's Schedule of Fees and consolidate the rule text applicable to the fee cap program into a single footnote. As a result, footnote 1 on page 16, footnote 9 on page 19 and footnote 6 on page 21 now reflect that the fees are capped at $75,000 per member per month on all Firm Proprietary and Non-ISE Market Maker transactions that are part of a originating or contra side of a crossing order.

Third, as noted above, in calculating the fee cap, the Exchange currently excludes the maker and taker fees charged by the Exchange for complex orders for certain option classes and the taker fees charged by the Exchange for regular orders for the Select Symbols. The Exchange proposes to remove these exclusions as they are no longer applicable because this activity is not part of one of the crossing order transactions and in order to simplify the fee schedule text. As a result, the Exchange proposes to amend the text in footnote 9 on page 19 and footnote 6 on page 21 to reflect this change.

[3] *See* Securities Exchange Act Release No. 64274 [sic] (April 8, 2011), 76 FR 20754 (April 13, 2012) (SR–ISE–2011–13).

[4] *See* Securities Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR–ISE–2010–73).

[5] Other account designations include Prop-firm (Member trading for its own account and clearing in the F range at OCC), Prop-cust (Member trading for its own account and clearing in the C range at OCC), BD-firm (Member trading on behalf of another registered broker/dealer clearing in the F range at OCC), BD-cust (Member trading on behalf of another registered broker/dealer clearing in the C range at OCC), FarMM (Member trading on behalf of another registered broker/dealer clearing in the M range at OCC).

[6] Other exchanges employ exclusions to their fee cap programs. For example, at the Chicago Board Options Exchange, Inc. (''CBOE''), Automated Improvement Mechanism (''AIM'') execution fees do not count towards the fee cap employed by that exchange. *See* CBOE Fees Schedule, Section 1 (Equity Options Fees).

[7] The Exchange currently charges a surcharge that ranges between $0.02 per contract to $0.22 per contract on the following licensed products: BKX, MFX, MID, MSH, SML, UKX, RMN, RUI, RUT, MVR, NDX, MNX, FUM, HSX, POW, TNY, WMX and NXTQ.

[8] Special orders are order types that involve a crossing transaction or an auction, where a broadcast is transmitted to Exchange members for potential participation and/or price improvement.

[9] A Complex Order is defined in Exchange Rule 722(a)(1) as any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

[10] The current exclusion applies to options classes that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols (''Select Symbols'').

[11] An order means a commitment to buy or sell securities as defined in Exchange Rule 715.

[12] The CBOE fees are capped at $75,000. *See* CBOE Fees Schedule, Section 1 (Equity Options Fees).

[13] PHLX Firms are subject to a maximum fee of $75,000. *See* PHLX Fee Schedule, Section II (Equity Options Fees).

Finally, the Exchange proposes to make the current service fee of $0.01 per side incremental after a member reaches the fee cap. As noted above, the service fee currently applies once a member reaches the fee cap level and applies to every contract side included in and above the fee cap. The Exchange notes that since members pay a transaction fee for contracts executed up to the cap level, they are defraying the Exchange's costs for providing services that include trade matching and processing, post trade allocation, submission for clearing and customer service activities related to their trading activity on the Exchange. ISE believes that the service fee need only be charged to incremental contracts where no transaction fee is assessed to offset the Exchange's costs.

The Exchange has designated this proposal to be operative on April 2, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(4) of the Act [15] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes proposed amendment to the fee cap is reasonable because it will continue to potentially lower transaction fees for members providing liquidity on the Exchange. Members who reach the fee cap during a month will not have to pay regular transaction fees and thus will be able to lower their monthly fees.

The Exchange believes that the fee cap is not unfairly discriminatory because all members, including non-ISE market makers, are eligible to reach the cap. The Exchange's fee cap applies only to firm proprietary business, and not customer or market maker business, because the Exchange is specifically targeting this type of business as a competitive response to similar fee caps other exchanges have adopted,[16] and thus to make it more attractive for members to send such business to the Exchange. The Exchange has adopted other incentive programs targeting other business areas: Lower fees (or no fees) for customer orders; [17] and tiered pricing that reduces rates for market makers based on the level of business they bring to the Exchange.[18]

The Exchange further believes the proposed changes to the fee cap program is equitable because it would uniformly apply to all members engaged in proprietary trading in option classes traded on the Exchange. As noted, ISE market makers currently receive the benefit of a fee reduction under a sliding scale fee structure applicable to non-Select Symbols.

The Exchange believes that the proposed change to the service fee is reasonable because it will also potentially lower transaction fees for members. Members who reach the fee cap during a month will pay the service fee instead of the regular transaction fees and thus will be able to lower their monthly fees. The Exchange believes that charging a service fee is also reasonable because it will allow the Exchange to recoup the costs incurred in providing certain services, which include trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange. The Exchange believes the proposed fee change will attract additional order flow to the Exchange and thereby will benefit all market participants.

The Exchange believes the proposed change to the service fee is equitable and not unfairly discriminatory because it would apply uniformly to all members engaged in proprietary trading. The proposed change to the manner by which the service fee is charged is designed to give members who trade a lot on the Exchange a benefit by way of a lower transaction fee.

The Exchange believes the proposed fee change will benefit market participants by potentially lowering their fees while allowing the Exchange to remain competitive with other exchanges that offer similar fee cap programs. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[19] 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–ISE–2012–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–27. 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/*

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] *See supra* notes 12 and 13.

[17] For example, the customer fee is $0.00 per contract for products other than Second Market Options, Singly Listed Indexes, Singly Listed ETFs and FX Options. For Second Market Options, the customer fee is $0.05 per contract and for Singly Listed Options, Singly Listed ETFs and FX Options, the customer fee is $0.18 per contract. The Exchange also currently has an incentive plan in place for certain specific FX Options which has its own pricing. *See* ISE Schedule of Fees.

[18] The Exchange currently has a sliding scale fee structure that ranges from $0.01 per contract to $0.18 per contract depending on the level of volume a Member trades on the Exchange in a month.

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

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–ISE–2012–27 and should be submitted on or before May 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9285 Filed 4–17–12; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66792; File No. SR–BX–2012–025]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Chapter V, Section 16 of the BOX Trading Rules

April 12, 2012.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2012, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. 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.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ OMX BX, Inc. (the ''Exchange'') proposes to amend Chapter V, Section 16 of the rules of the Boston Options Exchange (''BOX'') to address how BOX processes inbound orders when the BOX best price on the same side of the market locks, or is locked by the opposite side national best bid or offer (''NBBO''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/,* and on the Commission's Web site at *http://www.sec.gov*.

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 Chapter V, Section 16 of the BOX Rules to address how inbound orders are processed when the BOX best price on the same side of the market locks, or is locked by the opposite side national best bid or offer (''NBBO''). Currently, Chapter V, Section 16(b) sets forth that inbound orders on BOX are filtered prior to their entry on the BOX Book to ensure such orders will not Trade-Through the NBBO in accordance with the Options Order Protection and Locked/Crossed Market Plan (the ''Plan''). The rule provides that all of the filtering rules described are independent of whether the NBBO is locked or crossed, except where the BOX best price on the same side of the market as the inbound order has crossed, or is crossed by the opposite side NBBO, the order will be routed, if eligible, or rejected immediately. The Exchange proposes to amend the rule so that, in addition, where the BOX best price on the same side of the market as the inbound order has *locked,* or is *locked by,* the opposite side NBBO, the order will also be routed, if eligible, or rejected immediately. As such, the BOX trading engine is systemically either routing to an Away Exchange [4] or immediately rejecting such an order. Immediately rejecting such an order, which is not eligible for routing, prevents that order from being exposed,[5] and thereby removes the potential that such order could join the pre-existing locked market.

The following two examples illustrate how the proposed rule change would apply to inbound orders when the BOX best price on the same side of the market locks the opposite side NBBO and the orders are not designated as Eligible Orders: Example 1: When the NBBO is $6.65 × $6.60 and the BOX best price is $6.60 × $6.80, BOX receives a public customer order to buy at $6.60. Such an order is rejected by the trading engine back to the order sender. Example 2: When the NBBO is × $4.00 × $4.00 and the BOX best price is $4.00 ×$4.05, BOX receives a public customer order to buy at $4.00. Such an order is rejected by the trading engine. In the above examples, if the order was an Eligible Order, then the order will be routed to an Away Exchange.

The BOX NBBO filtering process set forth in Chapter V, Section 16 continues to be designed in a manner to prevent a sell order from being executed on BOX at a price inferior to the best bid available at any Away Exchange; similarly, any order to buy would not be executed on BOX at a price worse than the best offer available at any Away Exchange. Finally, Section (b)(i) is being amended to reflect that the term ISO is defined in subsection (h) of Chapter XII

[4] *See* BOX Trading Rules, Chapter XII, Section 5(a), providing in pertinent part, ''[o]nly orders that are specifically designated by Options Participants as eligible for routing will be routed to an Away Exchange (''Eligible Orders).

[5] *See* Chapter V, Section 16(b)(iii), providing that where an order is received which is executable against the NBBO and there is not a quote on BOX that is equal to the NBBO, that the order is exposed on the BOX Book at the NBBO for a period of one second. If the order is not executed during the one second exposure period, then the order is either routed or cancelled.

and not (g) as currently reflected in Section 16(b)(i).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by proposing the rule change to address how BOX processes inbound orders when the BOX best price on the same side of the market locks, or is locked by the opposite side national best bid or offer (''NBBO'').

The Plan provides a framework for order protection and addressing locked and crossed markets. As discussed above, the proposed rule change provides that where the BOX best price on the same side of the market as an inbound order has crossed or locked, or is crossed by, or locked by the opposite side NBBO, the order will be routed, if eligible, or rejected immediately. The Exchange believes handling the order as described above is consistent with the objectives of the Plan and assists BOX Options Participant in that it systemically removes the potential that such an order could join a pre-existing locked market. As such, the Exchange believes the proposed rule change is consistent with the Plan, necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe 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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2012–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–025. 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 (PREAMB). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–025 and should be submitted on or before May 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9284 Filed 4–17–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7849]

60-Day Notice of Proposed Information Collection: DS–3032 Choice of Address and Agent for Immigrant Visa Applicants, 1405–0126

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Choice of Address and Agent for Immigrant Visa Applicants.
- *OMB Control Number:* 1405–0126.
- *Type of Request:* Extension.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* DS–3032.
- *Respondents:* Immigrant Visa Applicants.
- *Estimated Number of Respondents:* 330,000.

- *Estimated Number of Responses:* 330,000.
- *Average Hours per Response:* 10 Minutes.
- *Total Estimated Burden:* 55,000.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain Benefits.

DATES: The Department will accept comments from the public up to 60 days from April 18, 2012.

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

- *Web:* Persons with access to the Internet may view and comment on this notice by going to the regulations.gov Web site at *http://www.regulations.gov*. You can search for the document by: selecting ''Notice'' under Document Type, entering the Public Notice number as the ''Keyword or ID'', checking the ''Open for Comment'' box, and then click ''Search''. If necessary, use the ''Narrow by Agency'' option on the Results page.
- *Mail (paper or CD–ROM submissions):* Chief, Legislation and Regulations Division, Visa Services—DS–158, 2401 E Street NW., Washington DC 20520–0106.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Sydney Taylor of the Office of Visa Services, U.S. Department of State, 2401 E, Street NW. L–630, Washington, DC who may be reached at *taylors2@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

Form DS–3032 permits the principal applicant to choose an agent to receive mailings from NVC and assist in the paperwork or paying required fees. The applicant is not required to choose an agent and may have all mailings sent to an address abroad. The applicant's file will be held at NVC until the signed form is returned.

Methodology

Form DS–3032 is mailed to the principal applicant once the petition has been approved by DHS and NVC has determined that the case is current and active for processing. The applicant submits the form to NVC via the mail only upon the request of NVC to do so.

Dated: April 11, 2012.

Edward Ramotowski,

Managing Director, Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2012–9329 Filed 4–17–12; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 7850]

Culturally Significant Object Imported for Exhibition Determinations: ''African Cosmos: Stellar Arts''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the object to be included in the exhibition ''African Cosmos: Stellar Arts,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Smithsonian Institution's National Museum of African Arts, Washington, DC, from on or about June 20, 2012, until on or about December 9, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 11, 2012.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–9392 Filed 4–17–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7817]

U.S. Department of State Advisory Committee on Private International Law (ACPIL); Online Dispute Resolution (ODR) Study Group Meeting

The Office of Private International Law, Office of the Legal Adviser, Department of State hereby gives notice that the ACPIL Online Dispute Resolution (ODR) Study Group will hold a public meeting on Friday May 4, 2012, from 1 p.m. to 4 p.m. EDT. The public meeting will take place at the main State Department building (Harry S Truman Building). The ACPIL ODR Study Group will meet to discuss the next session of the UNCITRAL ODR Working Group, scheduled for May 21 through May 25, 2012, in New York City.

The UNCITRAL ODR Working Group is charged with the development of legal instruments for resolving both business to business and business to consumer cross-border electronic commerce disputes. The Working Group is in the process of developing generic ODR procedural rules for resolution of cross-border electronic commerce disputes, along with separate legal instruments that may take the form of annexes on guidelines and minimum requirements for online dispute resolution providers and arbitrators, substantive legal principles for resolving disputes, and a cross-border enforcement mechanism.

For the reports of the first three sessions of the UNCITRAL ODR Working Group—December 13–17, 2010, in Vienna (A/CN.9/716); May 23–27, 2011, in New York ((A/CN.9/721); and Nov. 14–18, 2011, in Vienna (A/CN.9/739) and documents relating to the upcoming session—please follow the following link: *http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html*.

Time and Place: The public meeting will take place in Room 6320 in the Harry S Truman Building, 2201 C Street NW., Washington, DC 20520. Participants should arrive by 12:30 p.m. at the C Street gate for visitor screening. If you are unable to attend the public

meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This study group meeting is open to the public, subject to the capacity of the meeting room. Access to the meeting building is controlled; persons wishing to attend should contact Tricia Smeltzer or Niesha Toms of the Department of State Legal Adviser's Office at *SmeltzerTK@state.gov* or *TomsNN@state.gov* and provide your name, address, email address, contact information and affiliation for admission into the meeting. Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information. Persons who cannot attend but who wish to comment are welcome to do so by email to Michael Dennis at *DennisMJ@state.gov*. A member of the public needing reasonable accommodation should advise those same contacts not later than May 1. Requests made after that date will be considered, but might not be able to be fulfilled. If you are unable to attend the public meeting and you would like to participate by teleconferencing, please contact Tricia Smeltzer 202–776–8423 or Niesha Toms at 202–776–8420 to receive the conference call-in number and the relevant information.

Dated: April 11, 2012.

Michael Dennis,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2012–9330 Filed 4–17–12; 8:45 am]

BILLING CODE 7410–08–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on May 10, 2012, in Harrisburg, Pennsylvania. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. Such projects are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for June 7, 2012, which will be noticed separately. The Commission will also hear testimony on: (1) Amending its Regulatory Program Fee Schedule; (2) amending its Records Processing Fee Schedule; and (3) amending the Comprehensive Plan for the Water Resources of the Susquehanna River Basin. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and other items. The deadline for the submission of written comments is May 21, 2012.

DATES: The public hearing will convene on May 10, 2012, at 2:30 p.m. The deadline for the submission of written comments is May 21, 2012.

ADDRESSES: The public hearing will be conducted at the Pennsylvania State Capitol, Room 8E–B, East Wing, Commonwealth Avenue, Harrisburg, Pa.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436.

The proposed fee schedules and draft resolution on the amendments to the comprehensive plan can be accessed on the Commission's Web site at *http://www.srbc.net/pubinfo/publicparticipation.htm,* or by contacting the Commission to receive a copy by first-class mail. Information concerning the applications for these projects is available at the SRBC Water Resource Portal at *www.srbc.net/wrp.* Materials and supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/pubinfo/docs/2009-02%20Access%20to%20Records%20Policy%209-10-09.PDF.*

Opportunity to Appear and Comment: Interested parties may appear at the hearing to offer comments to the Commission on any project or other items listed above. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Ground rules will be posted on the Commission's Web site, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such rules at the hearing. Written comments on any project or other items listed above may also be mailed to Mr. Richard Cairo, General Counsel, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pa. 17102–2391, or submitted electronically through *http://www.srbc.net/pubinfo/publicparticipation.htm.* Comments mailed or electronically submitted must be received by the Commission on or before May 21, 2012, to be considered.

SUPPLEMENTARY INFORMATION: The public hearing will cover: (1) Amendment to its Regulatory Program Fee Schedule; (2) amendment to its Records Processing Fee Schedule; and (3) amendment to the Comprehensive Plan for the Water Resources of the Susquehanna River Basin. Each June before the start of the next fiscal year on July 1, the Commission considers amendments to fee schedules and the comprehensive plan.

The public hearing will also cover the following projects:

Projects for Rescission Action

1. Project Sponsor and Facility: BAE Systems Controls, Town of Union, Broome County, N.Y. (Docket No. 20030802).

2. Project Sponsor: Hawk Valley, Inc. Project Facility: Hawk Valley Golf Club, Brecknock Township, Lancaster County, Pa. (Docket No. 20000402).

Projects for Action

1. Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River), Piatt Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd (peak day).

2. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Eagle Rock Utilities, Black Creek Township, Luzerne County, and Hazle Township, Schuylkill County, Pa. Application for groundwater withdrawal of up to 0.288 mgd (30-day average) from Well ER–6, located in Black Creek Township, Luzerne County.

3. Project Sponsor and Facility: Aqua Resources, Inc. (Susquehanna River), Athens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.900 mgd (peak day).

4. Project Sponsor and Facility: Aqua Infrastructure, LLC. Application for source approval of a regional water supply distribution system to natural gas operations centered in Lycoming County, Pa.

5. Project Sponsor and Facility: Carrizo (Marcellus), LLC (Clearfield Creek), Reade Township, Cambria County, Pa. Application for surface water withdrawal of up to 1.152 mgd (peak day).

6. Project Sponsor and Facility: Empire Kosher Poultry, Inc., Walker

Township, Juniata County, Pa. Modification to increase total groundwater system withdrawal by an additional 0.499 mgd, for a total of 1.269 mgd (30-day average) (Docket No. 20030809).

7. Project Sponsor and Facility: Jo Jo Oil Company, Inc. (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd (peak day).

8. Project Sponsor and Facility: LDG Innovations, LLC (Tioga River), Lawrenceville Borough, Tioga County, Pa. Modification to increase surface water withdrawal by an additional 0.375 mgd, for a total of 0.750 mgd (peak day) (Docket No. 20100311).

9. Project Sponsor and Facility: LHP Management, LLC (Muncy Creek), Muncy Creek Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd (peak day).

10. Project Sponsor and Facility: LHP Management, LLC (West Branch Susquehanna River), Muncy Creek Township, Lycoming County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

11. Project Sponsor and Facility: Mountain Country Energy Services, Inc. (Driftwood Branch Sinnemahoning Creek), Lumber Township, Cameron County, Pa. Request for extension of Docket No. 20081213.

12. Project Sponsor and Facility: Niagara Gas & Oil Services Inc. (Susquehanna River), Athens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.999 mgd (peak day).

13. Project Sponsor and Facility: Northeast Natural Energy LLC (West Branch Susquehanna River), Cooper Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.500 mgd (peak day).

14. Project Sponsor and Facility: Northwestern Lancaster County Authority, Penn Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.324 mgd (30-day average) from Well 2.

15. Project Sponsor and Facility: Northwestern Lancaster County Authority, Penn Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 1.000 mgd (30-day average) from Well 3.

16. Project Sponsor and Facility: OTT North East Services, LLC (Starrucca Creek), Harmony Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.480 mgd (peak day).

17. Project Sponsor and Facility: Rausch Creek Land, L.P., Porter Township, Schuylkill County, Pa. Application for groundwater withdrawal of up to 0.100 mgd (30-day average) from Pit #21.

18. Project Sponsor and Facility: RES Coal LLC (Clearfield Creek), Boggs Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.306 mgd (peak day).

19. Project Sponsor and Facility: RES Coal LLC, Boggs Township, Clearfield County, Pa. Application for consumptive water use of up to 0.275 mgd (30-day average).

20. Project Sponsor and Facility: Roger D. Jarrett (West Branch Susquehanna River), Muncy Creek Township, Lycoming County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

21. Project Sponsor and Facility: Southwestern Energy Production Company (East Branch Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 1.500 mgd (peak day).

22. Project Sponsor and Facility: SWEPI LP (Chemung River), Town of Big Flats, Chemung County, N.Y. Application for renewal of surface water withdrawal of up to 0.107 mgd (peak day) (Docket No. 20080604).

23. Project Sponsor and Facility: SWEPI LP (Cowanesque River), Lawrence Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.942 mgd (peak day).

24. Project Sponsor and Facility: SWEPI LP (Tioga River—Tioga Junction), Lawrence Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.107 mgd (peak day) (Docket No. 20080606).

25. Project Sponsor and Facility: Talisman Energy USA Inc. (Chemung River), Town of Chemung, Chemung County, N.Y. Application for modification and renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20080605).

26. Project Sponsor and Facility: Tennessee Gas Pipeline Company (Susquehanna River), Asylum Township, Bradford County, Pa. Application for surface water withdrawal of up to 1.080 mgd (peak day).

27. Project Sponsor and Facility: Tennessee Gas Pipeline Company, Asylum Township, Bradford County, Pa. Application for consumptive water use of up to 0.030 mgd (30-day average).

28. Project Sponsor: Viking Energy of Northumberland, LLC. Project Facility: Power Plant, Point Township, Northumberland County, Pa. Application for renewal of consumptive water use of up to 0.387 mgd (peak day) (Docket No. 19870301).

29. Project Sponsor: Viking Energy of Northumberland, LLC. Project Facility: Power Plant, Point Township, Northumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.172 mgd from Well 1, and a total system withdrawal limit of up to 0.391 mgd (30-day average) (Docket No. 19870301).

30. Project Sponsor: Viking Energy of Northumberland, LLC. Project Facility: Power Plant, Point Township, Northumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.172 mgd from Well 2, and a total system withdrawal limit of up to 0.391 mgd (30-day average) (Docket No. 19870301).

31. Project Sponsor: Viking Energy of Northumberland, LLC. Project Facility: Power Plant, Point Township, Northumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.172 mgd from Well 4, and a total system withdrawal limit of up to 0.391 mgd (30-day average) (Docket No. 19870301).

32. Project Sponsor and Facility: WPX Energy Appalachia, LLC (North Branch Wyalusing Creek), Middletown Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.750 mgd (peak day).

Authority: Public Law 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806–808.

Dated: April 5, 2012.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2012–9348 Filed 4–17–12; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA–2009–0050]

Insurer Reporting Requirements; Annual Insurer Report on Motor Vehicle Theft for the 2006 Reporting Year

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

ACTION: Notice of Availability.

SUMMARY: This notice announces publication by NHTSA of the annual

insurer report on motor vehicle theft for the 2006 reporting year. Section 33112(h) of Title 49 of the U.S. Code, requires this information to be compiled periodically and published by the agency in a form that will be helpful to the public, the law enforcement community and Congress. As required by section 33112(c), this report provides information on theft and recovery of vehicles; rating rules and plans used by motor vehicle insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts.

ADDRESSES: Interested persons may obtain a copy of this report or read background documents by going to *http://regulations.dot.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Requests should refer to Docket No. 2009–0050.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Ave., SE., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) was implemented to enhance detection and prosecution of motor vehicle theft (Pub. L. 98–547). The Theft Act added a new Title VI to the Motor Vehicle Information and Cost Savings Act, which required the Secretary of Transportation to issue a theft prevention standard for identifying major parts of certain high-theft lines of passenger cars. The Act also addressed several other actions to reduce motor vehicle theft, such as increased criminal penalties for those who traffic in stolen vehicles and parts, curtailment of the exportation of stolen motor vehicles and off-highway mobile equipment, establishment of penalties for dismantling vehicles for the purpose of trafficking in stolen parts and development of ways to encourage decreases in premiums charged to consumers for motor vehicle theft insurance.

This notice announces publication by NHTSA of the annual insurer report on motor vehicle theft for the 2006 reporting year. Section 33112(h) of Title 49 of the U.S. Code, requires this information to be compiled periodically and published by the agency in a form that will be helpful to the public, the law enforcement community and Congress. As required by section 33112(h), this report focuses on the assessment of information on theft and recovery of motor vehicles, comprehensive insurance coverage and actions taken by insurers to reduce thefts for the 2006 reporting period.

Section 33112 of Title 49 requires subject insurers or designated agents to report annually to the agency on theft and recovery of vehicles, on rating rules and plans used by insurers to reduce premiums due to a reduction in motor vehicle thefts, and on actions taken by insurers to assist in deterring thefts. Rental and leasing companies also are required to provide annual theft reports to the agency. In accordance with 49 CFR 544.5, each insurer, rental and leasing company to which this regulation applies must submit a report annually not later than October 25, beginning with the calendar year for which they are required to report. The report would contain information for the calendar year three years previous to the year in which the report is filed. The report that was due by October 26, 2009 contains the required information for the 2006 calendar year. Interested persons may obtain a copy of individual insurer reports for CY 2006 by contacting the U.S. Department of Transportation, Docket Management, 1200 New Jersey Avenue SE., West Building, Room W12–140 ground level, Washington, DC 20590–001. Requests should refer to Docket No. 2009–0050.

The annual insurer reports provided under section 33112 are intended to aid in implementing the Theft Act and fulfilling the Department's requirements to report to the public the results of the insurer reports. The first annual insurer report, referred to as the Section 612 Report on Motor Vehicle Theft, was prepared by the agency and issued in December 1987. The report included theft and recovery data by vehicle type, make, line and model which were tabulated by insurance companies rental and leasing companies. Comprehensive premium information for each of the reporting insurance companies was also included. This report, the twentieth, discloses the same subject information and follows the same reporting format.

Issued on: April 2, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–9307 Filed 4–17–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 32607 (Sub-No. 4)]

Kiamichi Railroad L.L.C.—Trackage Rights Exemption—WFEC Railroad Company

Pursuant to a written joint facility agreement dated January 1, 2012, WFEC Railroad Company (WFECR) has agreed to grant limited nonexclusive overhead trackage rights to Kiamichi Railroad L.L.C. (KRR), over its entire line (the Line), between milepost 0.0 at Western Farmers Electric Cooperative, Inc.'s (Western Farmers) Hugo electric generating station and milepost 14.98, where WFECR connects to the line of the Texas, Oklahoma & Eastern Railroad Company, in Choctaw and McCurtain Counties, Okla.[1]

The transaction is scheduled to be consummated on May 2, 2012, the effective date of the exemption (30 days after the exemption was filed).

The purpose of the transaction is to permit KRR to provide rail service between the Hugo electric generating station and other Western Farmers' facilities located on or adjacent to the Line, or which may locate on or adjacent to the Line in the future, and connections to the lines of KRR and other rail carriers.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by April 25, 2012 (at least 7 days before the exemption becomes effective).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

An original and 10 copies of all pleadings, referring to Docket No. FD

[1] The Board previously granted KRR certain authority to operate over the Line. *See Kiamichi R.R.—Trackage Rights Exemption—WFEC R.R.,* FD 32607 (Sub-No. 3) (STB served May 16, 2002).

[2] KRR will have no authority to serve any other shippers on the Line. WFECR will retain the authority and responsibility for serving any such shippers.

32607 (Sub-No. 4), must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: April 12, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012–9326 Filed 4–17–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0734]

Proposed Information Collection (Report of General Information) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed as evidence to determine a claimant's entitlement to benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 18, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0734'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Titles:

a. VA Form 21–0820, Report of General Information.

b. VA Form 21–0820a, Report of Death of Beneficiary.

c. VA Form 21–0820b, Report of Nursing Home Information.

d. VA Form 21–0820c, Report of Defense Finance and Accounting Service (DFAS).

e. VA Form 21–0820d, Report of Lost Check.

f. VA Form 21–0820e, Report of Incarceration.

g. VA Form 21–0820f, Month of Death Check.

OMB Control Number: 2900–0734.

Type of Review: Extension of a currently approved collection.

Abstract: The forms will be used by VA personnel to document verbal information obtained telephonically from claimants or their beneficiary. The data collected will be used as part of the evidence needed to determine the claimant's or beneficiary's eligibility for benefits.

Affected Public: Federal Government.

Estimated Annual Burden:

a. VA Form 21–0820, Report of General Information—19,667.

b. VA Form 21–0820a, Report of Death of Beneficiary—6,667.

c. VA Form 21–0820b, Report of Nursing Home Information—2,500.

d. VA Form 21–0820c, Report of Defense Finance and Accounting Service (DFAS)—2,500.

e. VA Form 21–0820d, Report of Lost Check—2,500.

f. VA Form 21–0820e, Report of Incarceration—833.

g. VA Form 21–0820f, Month of Death Check—833.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. VA Form 21–0820, Report of General Information—2,360,000.

b. VA Form 21–0820a, Report of Death of Beneficiary—80,000.

c. VA Form 21–0820b, Report of Nursing Home Information—30,000.

d. VA Form 21–0820c, Report of Defense Finance and Accounting Service (DFAS)—30,000.

e. VA Form 21–0820d, Report of Lost Check—30,000.

f. VA Form 21–0820e, Report of Incarceration—10,000.

g. VA Form 21–0820f, Month of Death Check—10,000.

Dated: April 13, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–9340 Filed 4–17–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on April 23–24, 2012, at the St. Regis Hotel, 923 16th and K Streets NW., Washington, DC. The sessions will begin at 8:30 a.m. and end at 4 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

On April 23, the Committee will receive briefings on The Veterans Writing Project: An Alternative Approach to Helping Veterans Overcome Post Traumatic Stress

Disorder Symptoms; improving VA's outreach to younger Operation Iraqi Freedom and Operation Enduring Freedom Veterans; protecting Veterans educational benefits; developing social networks and information technology to reduce deaths among homeless Veterans; and improving pain, functioning and mental health to prevent suicidality among Veteran patients. On April 24, the Committee will receive briefings on policies on disability ratings for presumptive conditions and Veterans law school clinics: teaching administrative law to future attorneys. The Committee will also discuss possible issues to address in the Committee's 2012 report.

Time will be allocated for receiving public comments at 3 p.m. on April 23 and at noon on April 24. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Robert Watkins, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue NW., Washington, DC 20420; or email at *Robert.Watkins2@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Mr. Watkins at (202) 461–9214.

Dated: April 12, 2012.

By direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–9281 Filed 4–17–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 75 April 18, 2012

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Groundfish Fisheries of the Exclusive Economic Zone off Alaska and Pacific Halibut Fisheries; Observer Program; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 110831549–2180–01]

RIN 0648–BB42

Groundfish Fisheries of the Exclusive Economic Zone off Alaska and Pacific Halibut Fisheries; Observer Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 86 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) and Amendment 76 to the FMP for Groundfish of the Gulf of Alaska (GOA), (collectively referred to as the FMPs). If approved, Amendments 86 and 76 would add a funding and deployment system for observer coverage to the existing North Pacific Groundfish Observer Program (Observer Program) and amend existing observer coverage requirements for vessels and processing plants. The new funding and deployment system would allow NMFS to determine when and where to deploy observers according to management and conservation needs, with funds provided through a system of fees based on the ex-vessel value of groundfish and halibut in fisheries covered by the new system. This action is necessary to resolve data quality and cost equity concerns with the Observer Program's existing funding and deployment structure. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the FMPs, and other applicable law.

DATES: Written comments must be received no later than 1700 hours, Alaska local time (A.L.T.) June 18, 2012. Per section 313 of the MSA, NMFS will conduct public hearings on the proposed rule in Oregon, Washington, and Alaska during the public comment period. Details on the time, place, and format of the public hearings will be provided in a subsequent **Federal Register** notice.

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0210, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''Submit a Comment'' icon, then enter NOAA–NMFS–2011–0210 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* 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.
- *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.
- *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.

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 (e.g., 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of Amendment 86 to the FMP for Groundfish of the BSAI and Amendment 76 to the FMP for Groundfish of the GOA, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or by fax to 202–395–7285.

Inspections for U.S. Coast Guard Safety decals may be scheduled through the U.S. Coast Guard Web site at *http://www.fishsafe.info/contactform.htm* or by contacting the Seventeenth Coast Guard District safety coordinator at *http://www.uscg.mil/d17/,* or via phone at (907–463–2810), or (907–463- 2823).

FOR FURTHER INFORMATION CONTACT: Brandee Gerke, 907–586–7228.

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

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement, the Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), which was signed in Ottawa, Canada, on March 2, 1953, and was amended by the Protocol Amending the Convention, signed in Washington, DC, on March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982.

The Council has submitted Amendments 86 and 76 for review by the Secretary of Commerce (Secretary) and a Notice of Availability of the FMP amendments was published in the **Federal Register** on March 14, 2012 (*77 FR 50*), with comments on the FMP amendments invited through May 14, 2012.

Comments may address the FMP amendments, the proposed rule, or both, but must be received by 1700 hours, Alaska local time (A.L.T.) on June 18, 2012, to be considered in the approval/disapproval decision on the FMP amendments. All comments received at that time, whether specifically directed

to the FMP amendments or to this proposed rule, will be considered in the approval/disapproval decision on the FMP amendments.

Executive Summary

Fishery-dependent data collected by observers onboard vessels and at processing plants provide the cornerstone for management and conservation in North Pacific groundfish fisheries. The North Pacific Groundfish Observer Program (Observer Program) was created with the implementation of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in the mid-1970s.This proposed rule would implement a restructured funding and deployment system for observer coverage in North Pacific groundfish and halibut fisheries and extend observer coverage requirements to a broader range of vessels than are currently included in the North Pacific Groundfish Observer Program (Observer Program). This action would address longstanding concerns about statistical bias of observer-collected data and cost inequality among fishery participants with the Observer Program's current funding and deployment structure. Under the current structure, vessel and processing plant operators enter into direct contracts with observer providers to meet coverage requirements at 50 CFR 679.50. Existing coverage requirements, based on vessel length and processing volume, are set at 30 percent or 100 percent, and some vessels and processors are exempt from observer coverage.

In October 2010, the North Pacific Fishery Management Council (Council) unanimously adopted a motion to restructure the Observer Program's funding and deployment system. This proposed action would divide the Observer Program into two observer coverage categories—partial and full. All groundfish and halibut vessels and processors would be included in one of the categories. The partial observer coverage category would include fishing sectors (vessels and processors) that would not be required to have an observer at all times and the full observer coverage category would include fishing sectors required to have all of their operations observed.

This proposed rule would restructure the funding and deployment system for all vessels, shoreside processors, and stationary floating processors in the partial observer coverage category. It would retain the existing funding and deployment system for operations in the full coverage category. Vessels and processors in the partial coverage category would pay to NMFS an observer fee based upon the ex-vessel value of fish landed (ex-vessel value-based fee) for their observer coverage, per the authority granted by section 313 of the MSA. By creating two observer coverage categories with separate funding and deployment systems, the proposed rule would address cost inequity and data quality concerns with the existing Observer Program structure without imposing higher costs on fishing sectors that already pay for full observer coverage. Moreover, the two-category design would ensure that management programs with high observer coverage needs do not deplete the available funding for the partial coverage category fisheries.

An observer fee equal to 1.25 percent of the fishery ex-vessel value would be assessed on partial coverage category participants to fund their observer coverage under the authority of section 313 of the MSA. The 1.25 percent fee is estimated to generate revenue to fund observers for approximately 30 percent of the partial coverage category's harvest. NMFS and its contractor(s) would deploy observers in partial coverage sectors according to a randomized design to generate statistically representative estimates of total and retained catch and catch composition.

This proposed rule includes provisions for NMFS to develop and incorporate electronic video monitoring as a component of the restructured program. The MSA authorizes the use of collected fees for this purpose. Initially, NMFS would deploy electronic monitoring equipment on some vessels to learn more about the costs, benefits, and utility of video monitoring to optimize its use in the overall program. As discussed in this proposed rule, electronic video monitoring would likely not be available to all vessels who request video monitoring.

This proposed rule assumes that federal start-up funds will be available to the agency to transition from the current system under which the industry contracts directly with and pays the observer providers for the costs of the observers to the proposed system under which NMFS would contract directly with observer providers to have observers deployed in the partial coverage category sectors. The proposed rule does not include a mechanism to collect start-up funds from industry.

Under the proposed rule, each year, NMFS would prepare a report that reviews the progress of the program, describes the financial aspects of the program, and includes a plan for observer coverage rates for the partial coverage category for the upcoming year. The Council would review the annual report, monitor the program's progress, and recommend appropriate adjustments that would be implemented through subsequent rules.

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I. Background

The Observer Program provides the regulatory framework for NMFS-certified observers (observers) to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Regulations implementing the Observer Program at 50 CFR 679.50 require observer coverage aboard catcher vessels, catcher/processors, motherships, and shoreside and stationary floating processors that participate in the groundfish fisheries off Alaska. These regulations also establish vessel, processor, and observer provider responsibilities relating to the Observer Program.

Observer requirements for fisheries off Alaska have been in place since the mid-1970s, when the MSA was implemented and NMFS began to

monitor U.S. EEZ foreign groundfish fisheries. The Secretary and the Council recognized that effective management of living marine resources requires the types of information that are either available only or most efficiently through an observer program. In 1989, the Council developed a domestic, industry-funded observer program that authorized the placement of observers on domestic fishing vessels and at shoreside processing plants participating in Alaskan groundfish fisheries in response to a large reduction in foreign fishing and an emergence of a domestic fleet. The domestic program was implemented in 1990 and foreign fishing ended in 1991. The domestic Observer Program was implemented through Amendment 18 to the GOA FMP and Amendment 13 to the BSAI FMP (54 FR 50386; December 6, 1989; and 55 FR 4839; February 12, 1990). Although requirements have increased for vessels and processors participating in limited access and individual quota-based fisheries (referred to as catch share programs), observer coverage requirements have remained mostly unchanged since approval of the Observer Program.

The Observer Program has an integral role in the management of North Pacific fisheries. The information collected by observers provides the best available scientific information for managing the fisheries and developing measures to minimize bycatch in furtherance of the purposes and national standards of the MSA. Observers collect biological samples and fishery-dependent information on total catch and interactions with protected species. Managers use data collected by observers to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected data for stock assessments and marine ecosystem research.

High quality observer-collected data are a cornerstone of Alaska groundfish fisheries management. However, the quality and utility of observer-collected data are deficient due to the current structure of procuring and deploying observers in those fisheries with less than 100 percent observer coverage requirements. Under the current program, coverage requirements vary according to vessel length or the quantity of fish processed, and vessels less than 60 ft. length overall (LOA) and vessels fishing for halibut are exempt from coverage. A vessel equal to or greater than 60 ft. LOA, but less than 125 ft. LOA must carry an observer during at least 30 percent of its fishing days in a calendar quarter (30 percent coverage). Vessel owners and operators in the 30 percent coverage category choose when to carry observers, and fishery managers do not control when and where observers are deployed.

Under the current program, owners of smaller vessels pay observer costs that are disproportionately high relative to their gross earnings. To address these concerns, the Council and NMFS have explored alternative program structures as part of four separate actions since the early 1990s. However, the Council identified problems with each of these actions. Only one alternative program structure was adopted (59 FR 46126; May 6, 1994), though, as explained in the EA/RIR/IRFA prepared for this action (see **ADDRESSES**) it was rescinded prior to full implementation (61 FR 13782; March 28, 1996). While the Council was developing and considering options for an alternate program structure, the Council recommended, and the Secretary approved, several extensions of the Observer Program regulations. A thorough discussion of the history of the Observer Program, including past efforts to restructure and extend the Observer Program, is provided in the EA/RIR/IRFA prepared for this action (see **ADDRESSES**), and is not repeated here.

II. Proposed Action

Section 313 of the MSA (16 U.S.C. 1862) authorizes the Council to prepare a fisheries research plan that requires observers to be deployed in North Pacific fisheries and establishes a system of fees to pay the costs of observer coverage. The system of fees must be fair and equitable to all participants in the fisheries and may vary by fishery, management area, or observer coverage level. The fees may be expressed as a fixed amount reflecting actual observer costs or as a percentage of the unprocessed ex-vessel value of the fish and shellfish. Section 313 provides that the fees may be applied to fish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery. The fee percentage cannot exceed 2 percent of the ex-vessel value of fish harvested, and proceeds must only be used for costs directly incurred in carrying out the plan. Fee proceeds cannot be used to pay administrative overhead costs, although they may be used to station observers or electronic monitoring systems on vessels and in processing plants, and for inputting observer-collected data.

At its October 2010 meeting, the Council adopted a motion to restructure the Observer Program's funding and deployment system. This proposed action would divide the Observer Program into two observer coverage categories—partial and full. All groundfish and halibut vessels and processors would be included in one of the categories. The partial observer coverage category would include fishing sectors (vessels and processors) that would not be required to have an observer at all times, and the full observer coverage category would include fishing sectors required to have all their operations observed. The Council's motion and this proposed rule would restructure the funding and deployment system for all fisheries and shoreside processors in the partial observer coverage category and retain the existing funding and deployment system for operations in the full coverage category. Vessels and processors in the partial coverage category would pay an ex-vessel value-based fee to NMFS for their observer coverage. By creating two separate categories of observer coverage with different funding and deployment systems, NMFS and the Council intend to address cost inequity and data quality concerns with the existing Observer Program structure without imposing higher costs on fishing sectors that currently pay for full observer coverage. Moreover, increased monitoring needs of future management programs would not reduce the funds available to provide observer coverage for the fisheries as a whole under the Council's motion.

A. Observer Coverage and Deployment: Full Coverage Category

Since implementation of the domestic Observer Program in 1990, NMFS has required 100 percent observer coverage for vessels greater than or equal to 125 ft. LOA and for shoreside processors or stationary floating processors that process at least 1,000 metric tons (mt) of groundfish during a calendar month. NMFS has increased observer coverage requirements since 1990 for vessels and processors in catch share programs with increased monitoring needs such as the Western Alaska Community Development Quota (CDQ) Program, the American Fisheries Act (AFA), Amendment 80 to the BSAI FMP, and the GOA Rockfish Program. Under the proposed rule, NMFS would base observer coverage requirements on data needs for specific management programs rather than requirements based on vessel length or processing volume. The current length and volume-based requirements would be removed from regulations, and NMFS would assign vessels and processors to either

the partial or full coverage category based on NMFS' data needs.

Full observer coverage means that one or more observers is present at all times, (100 percent observer coverage). NMFS has determined that full observer coverage is needed in programs where catch is allocated to specific entities with quotas and limits of prohibited species catch, which must be discarded at-sea. Economic incentives exist for the industry to under report prohibited species catch discarded at-sea, especially in catch share programs where limits are placed on the amount of catch that may be retained and discarded. Therefore, the proposed rule would require full observer coverage on catcher vessels while they are fishing under a catch share program that has prohibited species catch limits.

Under the current Observer Program, most catcher/processors and motherships are required to have one or two observers onboard at all times due to their participation in catch share programs. This proposed rule would not reduce the observer coverage currently required under those programs.

This proposed rule would also require full observer coverage on all other catcher/processors and motherships to enhance the accuracy of NMFS' catch accounting system. Currently, for catcher/processors with less than 100 percent observer coverage, NMFS uses industry production reports to account for retained catch. NMFS uses discard rates from catcher/processors when there is an observer onboard to estimate at-sea discards for catcher/processors with less than 100 percent observer coverage. Catcher/processor vessels report the processed weight of their catch. On catcher/processors with less than 100 percent observer coverage, NMFS uses a product recovery rate to convert the retained processed weight to a whole-fish (round weight) weight equivalent. The application of product recovery rates for retained catch and at-sea discard rates used for less than 100 percent observed catcher/processor vessels to estimate their vessel's catch and discards introduces error into NMFS' catch accounting as discard rates may vary substantially among vessels. This proposed rule therefore would place all catcher/processors and motherships participating in the groundfish or halibut fisheries in the full coverage category to eliminate NMFS' need to use production reports based on product recovery rates to estimate retained catch and at-sea discard rates from other vessels to estimate discard rates for less than 100 percent observed catcher/processors.

TABLE 1—VESSELS AND PROCESSING PLANTS PROPOSED TO BE INCLUDED IN THE FULL OBSERVER COVERAGE CATEGORY

Proposed Full Coverage Category Vessels and Processing Plants
Catcher/processors (with limited exceptions noted below).
Motherships.
Catcher vessels while participating in:
AFA or CDQ pollock fisheries.
CDQ groundfish fisheries (except: sablefish; and pot or jig gear catcher vessels).
Central GOA Rockfish Program fisheries.
Inshore processors when receiving or processing Bering Sea pollock.

Vessels and processing plants in the full observer coverage category would be required to carry or provide at least one observer on 100 percent of the days they harvest, receive, or process groundfish or halibut. The proposed rule would not modify observer coverage, experience, or workload requirements at 50 CFR 679.50 for AFA directed pollock fishery vessels in the Bering Sea (BS), catcher/processors and motherships in the pollock CDQ fisheries in the BSAI, trawl catcher/processors while groundfish CDQ fishing, pot catcher/processors while CDQ fishing, catcher/processors and motherships in the Aleutian Islands (AI) pollock fishery, Amendment 80 vessels and non-AFA trawl catcher/processors, and Rockfish Program vessels.

Under the current Observer Program, owners and operators of vessels and processing plants contract directly with NMFS-permitted observer providers to meet the observer coverage requirements at 50 CFR 679.50. The fishing industry pays the observer providers directly for the cost of carrying observers. NMFS is not a party to the contracts between the industry and observer providers for the provision of observer services. Under this proposed rule, vessels and processors in the full coverage category would continue to obtain observers through direct contracts with observer providers as under the current Observer Program. Responsibilities for observer providers and observers in the current regulations at 50 CFR 679.50(i) and (j) would remain substantively unchanged for the purposes of the full coverage category, although the numbering of the regulations would be modified.

All catcher/processors would be included in the full coverage category, thus, a vessel would need to be classified as either a catcher/processor or a catcher vessel; sometimes vessels are registered as both. NMFS' determination of whether a vessel is a catcher/processor or a catcher vessel for purposes of observer coverage would be based on the operation category designation on the vessel's Federal Fishing Permit (FFP). A vessel designated as a catcher/processor at the beginning of a fishing year [1] would be classified as a catcher/processor for the entire fishing year for the purposes of observer coverage. If an FFP were amended during the fishing year to add a catcher/processor designation, that vessel would be assigned to the catcher/processor category for the remainder of the calendar year for the purposes of observer coverage. Except for the one-time election noted below, the catcher/processor designation would supersede the catcher vessel designation for vessels with both designations. Thus, a vessel with both a catcher/processor and a catcher vessel designation on the FFP would be assigned to the full coverage category for all fishing in that year, regardless of how the fishing was actually conducted.

This proposed rule would increase observer coverage requirements for catcher/processors less than 125 ft. LOA to 100 percent of the days they harvest, take delivery of, or process groundfish or halibut. However, the proposed rule would allow owners of vessels less than 60 ft. LOA with a history of catcher/processor and catcher vessel activity in a single calendar year, and owners of catcher/processors with an average daily groundfish production of less than 5,000 pounds in the most recent full calendar

[1] In this proposed rule, a fishing year is a calendar year.

year from January 2003 [2] through January 2010, to make a one-time election as to whether their vessel will be in the partial observer coverage category or the full observer coverage category. For vessels less than 60 ft. LOA with catcher/processor and catcher vessel activity in the same year, the election would be effective as long as both operation categories are listed on the FFP. Should an operator amend their FFP to list only one operation type, the one-time election would no longer apply if the permit were subsequently amended again to list both operation types. The one-time election for catcher/processors with an average daily production of less than 5,000 pounds in the most recent year of operation prior to 2010 would apply for the duration the FFP of the qualified vessel is issued to the person making the one-time election. Upon transfer of the vessel to a new person, the one-time election would be void and the catcher/processor designation would be the default designation with a full observer coverage requirement if listed on the FFP.

NMFS would verify a vessel's eligibility for the one-time election with the official Catch Accounting System (CAS), which contains production information back to 2003. Owners of eligible vessels would be required to notify NMFS in writing of their observer coverage category choice at least thirty days prior to embarking on their first fishing trip under the new program so that vessels could be included in the partial coverage category selection pools (described below). If the vessel meets the above criteria and the owner neglects to make a one-time election prior to the vessel's first trip, the catcher/processor designation would be the default designation.

While developing the proposed rule, NMFS realized that some vessels used to harvest and freeze a minimal amount of whole fish meet the existing definition of a catcher/processor and so would be included in the proposed full coverage category. To better align observer coverage with the data needs from these vessels, this proposed rule would allow operators of catcher/processors that process no more than 1 mt of round weight equivalent groundfish on any day (to a maximum of 365 mt in a calendar year) to be included in the partial observer coverage category for the following year. This allowance is consistent with the existing catcher vessel definition for license limitation program groundfish. An operator of a catcher/processor that processes up to 1 mt of groundfish per day in the current calendar year would be eligible to follow the procedures for participating in the partial observer coverage category (described below) instead of the full observer coverage category for the following calendar year. NMFS proposes that owners of vessels that process up to 1 mt of groundfish per day could elect to be in the partial coverage category for the following year by registering with the Observer Declaration and Deployment System (Deployment System) that they processed no more than 365 mt of groundfish in the current calendar year. If a vessel processes more than 1 mt round weight equivalent per day in a calendar year, it would not be eligible to participate in the partial observer coverage category in the following year. Vessels that process halibut or more than 1 mt of round weight equivalent groundfish per day would be designated a catcher/processor for purposes of observer coverage category assignment.

B. Observer Coverage and Deployment: Partial Coverage Category

The partial observer coverage category would be composed of groundfish and halibut catcher vessels and shoreside and stationary floating processors required to carry or provide an observer for less than 100 percent of their operations. Operations that would be in the partial observer coverage category include all catcher vessels except while participating in fisheries requiring full observer coverage (see above) and all shoreside or stationary floating processors except while receiving deliveries of BS pollock. If a catcher vessel or shoreside processor participates in fisheries with full observer coverage requirements and fisheries with partial observer coverage requirements, the operator would be subject to the respective coverage requirements and may be subject to both coverage categories within a year.

TABLE 2—VESSELS AND PROCESSING PLANTS PROPOSED TO BE INCLUDED IN THE PARTIAL OBSERVER COVERAGE CATEGORY

Proposed partial coverage category vessels and processing plants
Catcher vessels designated on an FFP when directed fishing for groundfish in federally managed or parallel fisheries, except those in the full coverage category.
Catcher vessels when fishing for halibut individual fishing quota (IFQ) or CDQ.
Catcher vessels when fishing for sablefish IFQ or fixed gear sablefish CDQ.
Catcher/processors with a maximum daily production of 1 mt, if so elect.
Catcher/processors meeting criteria above for one time election of coverage category, if so elect.
Shoreside or stationary floating processors, except those in the full coverage category.

The partial observer coverage category is designed to replace the fixed coverage levels currently specified in regulations with coverage designed to fit data needs for conservation and management, and to improve the quality of observer-collected data among fleets where only a portion of the fishing and processing activity is observed. Under the proposed rule, vessels and processing plants in the partial coverage category would be assigned observer coverage through a NMFS deployment system with predetermined random selection probabilities. As described in section 3.2.3 of the analysis (see **ADDRESSES**), the use of a randomized design to assign observers to individual trips or vessels addresses NMFS' need to collect unbiased, representative data on catch and bycatch in the groundfish and halibut fisheries. The current program is limited as vessels and plants that are required to have 30 percent observer coverage select when to carry observers, which statistically biases estimates of catch and bycatch. Moreover, NMFS lacks catch and effort information from groundfish vessels less than 60 ft. LOA and halibut vessels of any length. This proposed rule would remove exemptions from observer coverage for halibut vessels and for groundfish

[2] The Council's motion does not specify the period of time prior to 2010 that a vessel may qualify for this one-time election. NMFS proposes 2003 as the lower bound for this time period because Catch Accounting System data are not available before 2003.

vessels less than 60 ft. LOA and implement a randomized observer deployment process to improve the probability that unbiased information on catch and bycatch can be collected.

Operations in the partial coverage category would be randomly selected for observer coverage when fishing for halibut or when directed fishing for groundfish in the federally managed or State of Alaska (State) parallel groundfish fisheries. This proposed rule would define the commonly-used ''parallel groundfish fishery'' term as a fishery that occurs in State waters, is open at the same time as Federal groundfish fisheries in Federal waters, and groundfish catch is deducted from the Federal total allowable catch (TAC).

1. Funding

Under the authority of section 313 of the MSA, the proposed rule would require participants in the partial coverage category to pay an ex-vessel value-based fee for observer coverage. The observer fee may be assessed against a subset of fishing vessels and processors, including those not required to carry an observer or electronic monitoring under the fisheries research plan (deployment plan). NMFS would use the ex-vessel value fee proceeds to contract with observer providers to deploy observers in the partial coverage category. Section 313 allows NMFS to use the fees to pay for stationing observers or electronic monitoring systems on board fishing vessels and fish processors.

The maximum ex-vessel value fee authorized under section 313 is 2 percent. In its October 2010 motion, the Council selected a fee of 1.25 percent. Under the ex-vessel value fee program, the fee amount would be paid by both vessels and processors in the partial coverage category. The Council's and NMFS' intent is for owners and operators of catcher vessels delivering to shoreside processors or stationary floating processors to split the fee liability 50/50 with the processor, such that each operation would pay 0.625 percent of the total ex-vessel value of the landing. While the intent is that vessels and processors would be responsible for their portion of the ex-vessel value fee, the owner of a shoreside processor or a stationary floating processor named on a Federal Processing Permit (FFP) would be responsible for collecting the fee, including the vessel's portion of the fee, at the time of landing and remitting the full fee amount to NMFS. However, because NMFS does not regulate business transactions between vessels and processors, the intended fee liability split would not be codified in Federal regulations. The proposed regulations provide that NMFS would hold the processor liable for payment of the entire fee.

The proposed fee percentage (1.25 percent) seeks to balance the need for revenue to support the Observer Program while minimizing impacts on the industry sectors included in the restructured program. The Council considered a fee of less than 2 percent of the fishery ex-vessel value on vessels less than 60 ft. LOA to minimize the costs to the smallest operations. However, in order to develop a fee program that would be fair and equitable across all sectors in the restructured program, the Council determined that the same fee percentage should apply to all restructured sectors as they all benefit from resulting observer data that is essential for conservation and management of the fisheries in which they participate. Section 4.3.3 of the analysis (see **ADDRESSES**) estimates a 1.25 percent fee would generate about $4.2 million per year, based on the estimated average of ex-vessel revenues from 2005 through 2008, and fund over 9,000 observer days. The amount of revenue needed to support the minimum proposed 30 percent at-sea observer coverage for the partial coverage category is estimated to be $3.8 million, which would fund 8,093 observer days (see **ADDRESSES**). The estimate assumes that vessels less than 40 ft. LOA would not be observed, although they would be subject to the ex-vessel value fee and benefit from observer data collected on larger vessels. Vessels less than 40 ft. LOA would have zero probability of being selected for observer coverage in the initial year or years of the program; however, the criteria for no selection could change annually through an annual deployment plan. The Council determined that a 1.25 percent fee would fund the necessary observer days to reach the target coverage, with a buffer equal to roughly 10 percent of the estimated revenue. In addition, a fee of 1.25 percent would better ensure that an individual vessel or processor would not pay over the 2 percent maximum fee authorized in the MSA. Should the Council determine the 1.25 percent fee is insufficient or excessive following its review of the NMFS annual observer report to be prepared as part of this proposed action, the Council could adjust the fee percentage up or down through a subsequent regulatory action.

2. Observer Deployment

A primary goal of the restructured program is to attain unbiased fishery catch estimates by allowing NMFS to assign and deploy observers on vessels and plants that are currently unobserved or observed at a rate of 30 percent, using a random selection plan. The restructured Observer Program would require NMFS to efficiently allocate observer effort towards multiple objectives, such as estimating catch, bycatch, and protected species interactions, within the budget generated by ex-vessel value-based fee proceeds. By September 1 of each year, NMFS would complete an observer deployment plan containing projected observer coverage rates in the upcoming calendar year for the various sectors in the partial coverage category. The deployment plan would describe the methods by which vessels, plants, or individual fishing trips would be chosen for observer coverage.

Two distinct observer coverage selection pools are proposed for vessels in the partial coverage category—fishing trip selection and vessel selection. NMFS would establish criteria for inclusion in the respective pools (i.e., vessel length and gear-type) to maximize efficiency in generating representative estimates of catch and bycatch given available funds and anticipated fishing effort. NMFS would specify the vessel-length and gear-type criteria for each selection pool in the annual deployment plan.

a. Entering Vessels Into the Deployment System

To properly allocate observer resources, NMFS would need to estimate the level of participation for each selection pool for the upcoming calendar year. The more accurate the projected fleet activity, the higher the likelihood of achieving planned coverage levels. NMFS presented its proposed plan for compiling a list of expected fishery participants to the Council's Observer Advisory Committee in September, 2011 and to the Council in October, 2011. NMFS described a process whereby operators of vessels named on an Federal Fisheries Permit (FFP) would be required to enter their vessel information into the Deployment System by December 1 of the year prior to each fishing year in order to generate an accurate list of vessels that would participate in the fisheries in the upcoming year. However, NMFS amended this proposed provision to automate this process and provide latitude to vessel owners and operators, such that they would not be required to meet a December 1 entry deadline that they could be penalized for failing to meet.

As part of this proposed action, NMFS would establish the Deployment System as the communication platform among industry participants in the partial coverage category, the Observer Program, and contracted observer providers. The Deployment System would be available by Internet and phone. NMFS would provide instructions for accessing the Deployment System in the written notification to vessels that are auto-entered into the selection pools. Access to the Deployment System would also be available through the NMFS Alaska Region Web site (see **ADDRESSES**).

To generate a list of expected fishery participants for the upcoming calendar year, NMFS would auto-enter in the Deployment System (a) all partial coverage category vessels that are designated on an FFP and; (b) all catcher vessels that are not designated on an FFP but that land sablefish IFQ or halibut IFQ or CDQ in a fishing year. NMFS would notify in writing, operators of vessels that are entered into the Deployment System for the upcoming year to indicate the applicable selection pool for his or her vessel and instructions for communicating with the Observer Program for the upcoming year.

An owner or operator would be required to manually enter in the Deployment System any vessel not auto-entered into a selection pool prior to embarking on a trip to directed fish for groundfish or to fish for halibut. An owner of a vessel designated on an FFP that is issued after December 1 of the year prior to the fishing year would be required to enter his or her vessel information into the Deployment System within 30 days of issuance of the FFP. While an FFP is issued to specific a vessel, a permit to harvest IFQ and halibut CDQ is issued to a person and no vessel is named on the permit. Thus, operators of non-FFP vessels that are not auto-entered into the Deployment System due to a lack of prior year fishing activity would need to enter their vessel information into the Deployment System at least thirty days prior to embarking on a fishing trip for sablefish IFQ or halibut IFQ or CDQ to be entered into a selection pool. In this case, the Deployment System would notify the operator as to the selection pool into which the vessel is entered. NMFS requests public comment on the process proposed for NMFS to auto-enter vessels with fishing activity in a preceding year and the process proposed for vessel owners or operators to manually enter their vessel information due to issuance of a new FFP.

TABLE 3—DEPLOYMENT SYSTEM ENTRY PROCESS FOR VESSELS DESIGNATED ON AN FFP AND VESSELS NOT DESIGNATED ON AN FFP

	FFP Vessels	Non-FFP vessels (sablefish IFQ and halibut IFQ or CDQ)
Initial vessel list for upcoming year	NMFS generates a list of current FFP vessels	NMFS generates a list from current year landings.
Additions after December 1 of prior fishing year	Owners enter their vessel information into the Deployment System within 30 days of FFP issuance.	Operators enter their vessel information into the Deployment System at least 30 days prior to first trip.
Notification of selection pool (trip or vessel)	If in the initial vessel list, then owner or operator notified in writing from NMFS. If added after the initial list, then owner or operator notified via the Deployment System.	

b. Trip Selection Pool

NMFS would select individual fishing trips using the Deployment System for observer coverage in the trip selection pool. Initially, trips taken by hook-and-line and pot vessels 57.5 ft. LOA or greater and all trawl vessels in the partial coverage category would comprise the trip selection pool. NMFS would further subdivide the trip selection pool into groups with similar traits (sampling strata) and assign a specific sampling rate to each stratum to minimize the variance, and thus increase certainty, in observer-derived catch estimates. In subsequent years, NMFS would review the suitability of the sampling strata and rates and make necessary adjustments to the strata through the annual deployment plan.

Operators of vessels in the trip selection pool would be required to contact the Deployment System by phone or Internet (hail-in) at least 72 hours in advance of embarking on a fishing trip for halibut or directed fishing for groundfish. Upon hailing-in, the vessel operator would be prompted to enter information about the departure location and duration of the upcoming fishing trip. The Deployment System would determine the sampling stratum for each vessel by the vessel's identification number and information provided in the user's Deployment System account (FFP or Alaska Department of Fish and Game [ADF&G] number). A determination as to whether the trip is or is not selected for observer coverage would be generated during the web session or call through a random process that would be described in the annual deployment plan. The vessel operator would be notified of the result (affirmative or negative for observer coverage) by the Deployment System, and the unique call identification number (receipt) would be provided. For selected trips, the Deployment System would provide the vessel operator with instructions on how to coordinate with an observer provider to obtain the required observer coverage as well as notify observer-provider(s) contracted by NMFS of trips subject to observer coverage. The observer provider would work with the vessel operator to coordinate observer logistics in a manner consistent with the current observer deployment system. Operators would be prohibited from embarking on a trip selected for observer coverage without an observer, unless the Observer Program released the selected trip from observer coverage due to extenuating circumstances (e.g., the observer provider is unable to deploy an observer to the vessel within a day of the intended fishing trip departure).

A notification period of 72 hours prior to a fishing trip departure is proposed to allow the observer provider sufficient time to deploy an observer to the port of embarkation. NMFS recognizes that a longer notification window is preferable for observer providers to make arrangements to deploy an observer to the port indicated by the vessel operator and a shorter notification window is preferable for vessel operators, whose fishing plans may change over the course of a week. Existing regulations for similar observer deployment systems in Northeast and Western Pacific fisheries at 50 CFR 648.85 and 665.205, respectively, require operators to notify NMFS 72 hours in advance of an

intended fishing trip. NMFS considers that for the affected North Pacific groundfish and halibut fisheries 72 hours is a reasonable compromise between the need for an observer provider to have advanced notice of a selected trip and the operator's desire for flexibility in their fishing plans. An operator would not be required to wait 72 hours to embark on a trip that is registered with the Deployment System and not selected for observer coverage; rather they could depart at will. Further, an operator could embark on a fishing trip selected for observer coverage when the observer is on board, which could be less than 72 hours in some cases. Thus, NMFS proposes a prior-notification period of 72 hours and notes that there is a possibility that an observer could be deployed in less than 72 hours. However, that would not be guaranteed.

NMFS recognizes several factors that could result in the failure of a vessel to commence a trip as planned, such as a mechanical breakdown or weather delay. Vessel operators may also alter fishing plans to avoid having to take an observer on a particular trip if selected for coverage. The delay or cancellation of a selected fishing trip would not result in an automatic release from observer coverage. NMFS would make an observer available to a vessel for up to 48 hours past the departure date and time of the fishing trip that was selected by the Deployment System. After 48 hours, if an operator has not embarked on a selected trip, the trip would be invalidated by the Deployment System and the observer could be deployed to another vessel. If a selected trip is cancelled by the operator or invalidated by the Deployment System, the observer coverage requirement would apply to the vessel's next trip. The vessel operator would be required to register a new trip with the Deployment System and wait for an observer to be available before embarking on the new trip. NMFS proposes the maximum 48-hour delay to provide some room for unexpected delays while avoiding the cost of paying for an observer to wait in port for more than two days before embarking on a trip.

Observer coverage would be required for the entire fishing trip if selected in the trip selection pool. The ''fishing trip'' definition at 50 CFR 679.2 specific to vessels in the partial coverage category of the groundfish and halibut Observer Program would be revised to refer to the period of time between when a catcher vessel departs a port to harvest fish until the offload of all fish from that vessel. With the exception of regulatory discards, a fishing trip would be prohibited from commencing with fish aboard. The revised definition is intended to match the information entered into the Deployment System by the operator about the planned fishing trip departure time and to ensure that all fishing events and harvest from an entire trip are observed when selected. The ''fishing day'' definition at 50 CFR 679.2 would be removed from regulations as observer coverage would no longer be required as a portion of the days fished by an operation in a calendar quarter.

NMFS recognizes that some operators would not know their exact departure plans 72 hours in advance of some fast-paced fisheries. To address this uncertainty, vessel operators would be able to register more than one trip at a time with the Deployment System. The opportunity for the operator to register and enter information about multiple trips would inform them if any of their trips in a fast-paced open access fishery, such as the pollock or Pacific cod fisheries in the GOA, are selected for observer coverage. The observer provider would be notified of the registered trips that are selected for coverage so that logistics to deploy an observer could be arranged in advance. Moreover, NMFS and the observer provider contractor(s) would need to put observers on stand-by in the departure ports for deployment into fast-paced fisheries. Doing so would prevent the interruption of a vessel's fishing activity or the need for the Observer Program to release selected fishing trips from observer coverage.

c. Vessel Selection Pool

The vessel selection pool is proposed as an alternate to the trip selection pool. Vessel selection would reduce the volume of trip notifications received by the Deployment System. Further, vessel selection would increase NMFS' ability to deploy observers on small, fixed gear vessels, which would otherwise be logistically challenging under a trip selection protocol. Initially, vessels greater than or equal to 40 ft. LOA but less than 57.5 ft. LOA using fixed gear to fish groundfish or halibut would comprise the vessel selection pool. Vessel criteria for inclusion in the vessel selection pool would be specified in annual deployment plans.

Vessels with an FFP or vessels used to harvest IFQ or CDQ halibut would be included in a selection pool. For the vessel selection pool, NMFS would randomly choose a subset of vessels based on either the FFP number or a combination of ADF&G registration number and planned fishing activity to observe for a predetermined time period.

Vessel operators required to manually enter their vessel information into the Deployment System would be notified by the Deployment System as to whether or not their vessel is selected for observer coverage. The Deployment System would provide instructions for the operator of a vessel selected for observer coverage to contact a NMFS-contracted observer provider to discuss logistics for obtaining observer coverage. The proposed rule would require operators to comply with the instructions provided by the Deployment System. For vessels that are auto-entered into the vessel selection pool, NMFS would indicate in the written notification whether or not a vessel is selected for observer coverage and would include instructions for the owner or operator to coordinate with the Observer Program and the contracted observer provider for required observer coverage.

For the vessel selection pool, the time period for which a selected vessel would be required to carry an observer would be specified in the annual deployment plan, in the Deployment System, and in the written notification sent out to non-FFP vessel operators. In section 3.7.2.3 of the analysis (see **ADDRESSES**), a period of 3 months was proposed as the initial vessel selection duration. Under that scenario, an observer would be required on every fishing trip while the vessel is directed fishing for groundfish or halibut over a 3-month period. Initially, the 3-month period would correspond to a quarter of the calendar year. A vessel selected in the first ''block'' of 3 months would return to the pool of vessels eligible for random selection and could be selected again in the following blocks. The potential for re-selection is referred to as ''sampling with replacement.'' Sampling with replacement ensures that each selected sample is independent of the others so that each vessel has an equal probability of being selected on any given draw. Under the assumption that the vessels registered in the selection system represent similar entities, this randomization would protect against bias so that representative estimates of fishery catch from observer-collected data are generated. Given the large number of vessels expected in the pool, successive selections of the same vessel are unlikely but possible. The majority of vessels in the vessel selection system would be hook-and-line vessels participating in halibut IFQ and CDQ, and sablefish IFQ fisheries. In the future, the vessel selection time period could be adjusted through the annual deployment plan to match logical

increments of the fishing season and to ensure that operators of vessels selected are not choosing their fishing trip dates to avoid carrying an observer.

NMFS anticipates logistical complexities related to deploying observers on vessels less than 57.5 ft. LOA, and coordination between NMFS and vessel operators would be needed to successfully deploy observers with minimal impact to the vessel's normal operations. Vessels less than 57.5 ft. LOA have not previously been subject to observer coverage. Due to NMFS' limited experience with individual, less than 57.5 ft. LOA vessels, since they previously were unobserved vessels, NMFS expects vessel owners and operators to have justified concerns about crew and observer safety and displacement of crew members to carry an observer. When possible in the coordination process, at the request of the vessel owner or operator, the observer and a NMFS program coordinator may visit the vessel, meet with the captain and crew, and familiarize themselves with how an observer would sample aboard a particular vessel. At its discretion, NMFS could provide electronic monitoring equipment to the owner or operator for use on the vessel.

As a first step in coordination, upon first login to the Deployment System, vessel operators would indicate their assessment as to whether or not an observer could be accommodated aboard their vessel. The operator would be prompted to enter the reason why an observer could not be accommodated (e.g., lack of space for an observer to sample) if so indicated. A program coordinator may visit any vessel selected for observer coverage where the operator indicated that an observer could not be accommodated to verify this assessment. If NMFS determined that the vessel was unsuitable to carry an observer, the Observer Program, in its discretion, could release the vessel from the requirement to be observed for the duration of the selection period.

d. Release From Observer Coverage

Any determination to release a selected vessel from observer coverage during the selected time period would be made on a case-by-case basis by the Observer Program. There are a variety of reasons for which a selected vessel or fishing trip could be released from observer coverage. For example, inclement weather could prevent an observer from getting into a port where a selected vessel is located. In that case, NMFS would work with the observer contractor to evaluate the situation and, if warranted, grant a release from coverage to prevent undue interruption to a vessel's operations. As it is impossible to anticipate every situation, the decision to grant a release or not grant a release will be made on a case-by-case basis. The Observer Program would document the reasons and evidence the decision-maker relied on to make the decision to grant or deny a release and, if a release is granted, the duration for which the vessel is released from coverage. NMFS recognizes that the decision process on observer coverage releases needs to be efficient to limit impacts (such as delays) on the fishing community. Observer Program staff would inform the vessel operator via phone or email of its decision to release, or not, a selected vessel or trip from coverage and note the release in the corresponding trip information in the Deployment System. Information on release occurrences, and the reasons for them, would be included in future reporting on Observer Program operations to the Council. NMFS anticipates that the Contracting Officer Technical Representative (COTR) assigned to this contract will make these release decisions initially. The COTR would work on an ''on call'' basis to ensure the decisions are made in a timely manner. As experience is gained with the program and the reasons for releases are better understood, NMFS may be able to delegate routine releases to the observer contractor, with appropriate documentation as to the reasons, to ensure program efficiency.

e. Comparison of Vessel and Trip Selection Pools

TABLE 4—PRIMARY DISTINCTIONS BETWEEN THE PROPOSED VESSEL AND TRIP SELECTION POOLS

	Vessel selection pool	Trip selection pool
Selected Unit	Vessel	Fishing Trip.
When Selected	Prior to each calendar quarter	At least 72 hours prior to trip.
When Operator Notified	Prior to each calendar quarter	Prior to each trip.
How Operator Notified of Selection	Via written notification	Via Deployment System.
Duration of Coverage	For the first year of the program, three months. Subject to change per annual deployment plan.	Fishing Trip.
Possible Electronic Monitoring Option	Upon release from observer coverage requirement.	No.
Owner's or Operator's Notification Requirements.	If selected, must provide access and comply with instructions provided by the Deployment System or the written notification, as applicable, to obtain observer coverage.	Must notify NMFS at least 72 hours prior to embarking on a groundfish or halibut fishing trip.

The following diagram depicts the proposed vessel and trip selection process within the Deployment System, upon completion of the vessel entry process, either through auto-entry or manual-entry described above:

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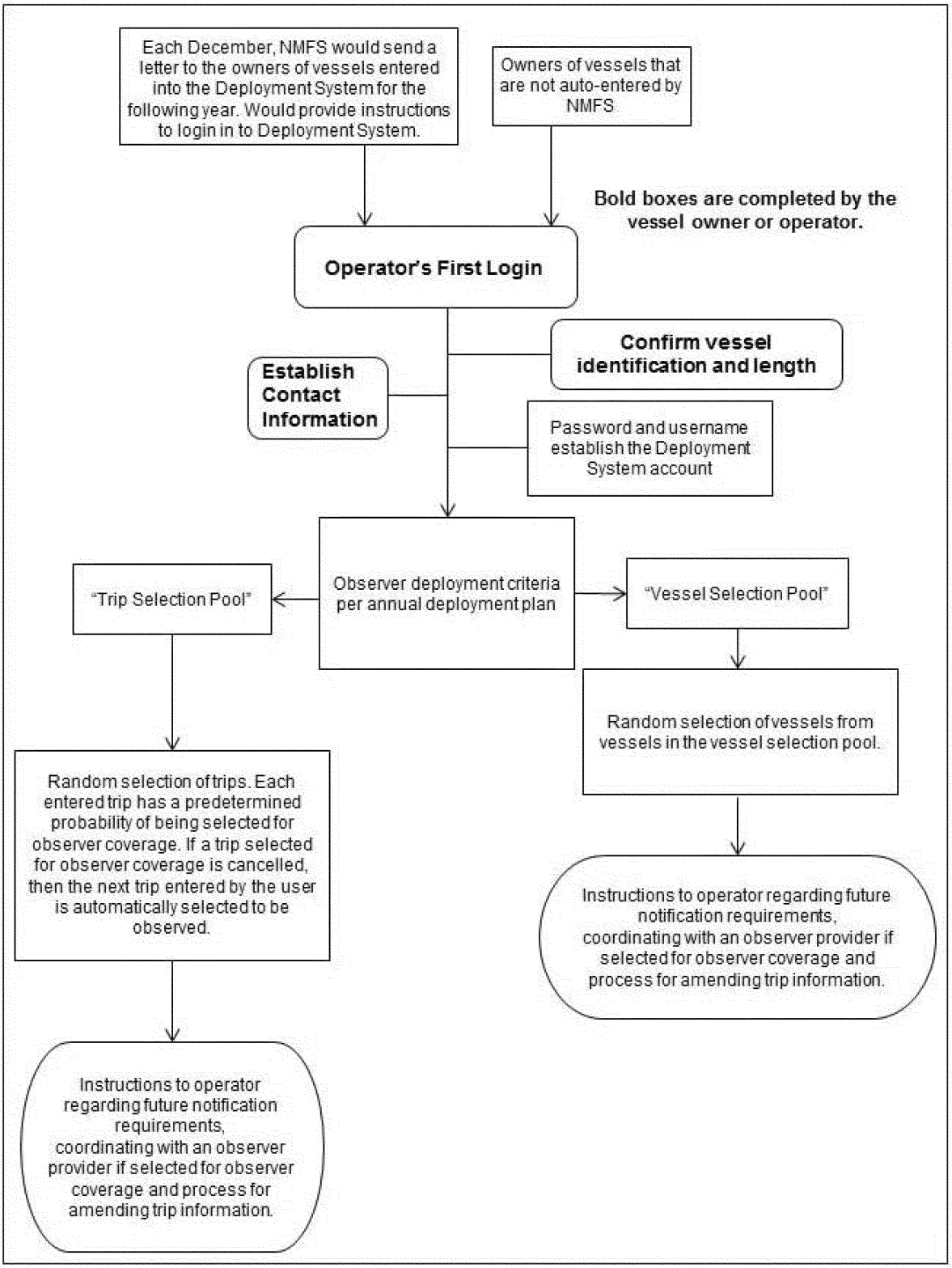

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f. Electronic Monitoring

NMFS is encouraged by emerging technological developments that enable the use of electronic monitoring when its use is cost effective and can provide NMFS and the Council information needed to meet a management objective. NMFS and the Council have been engaged in electronic monitoring development for several years, and they jointly conducted a 2008 workshop and produced a report available at *http://alaskafisheries.noaa.gov/npfmc/conservation-issues/observer-program.html,* which is still relevant. Since then, NMFS and the International Pacific Halibut Commission jointly

conducted research comparing the use of electronic monitoring video systems and observers in hook-and-line fisheries. A full report of that study, ''Bycatch characterization in the Pacific halibut fishery: a field test of electronic monitoring technology,'' is available at the North Pacific Fisheries Research Board Web site at: *http://project.nprb.org/*. NMFS is currently assisting industry efforts funded through a National Fish and Wildlife Foundation grant to further develop and operationalize electronic monitoring technology for use on small hook-and-line vessels where human observation can be challenging, and, at times, impossible.

The Council's Observer Advisory Committee (Committee) assessed electronic monitoring at its March 2011 meeting, considered the potential, and some of the limitations, of the current state of electronic monitoring technology relative to Alaskan fisheries management issues. The Committee noted that there are existing operational electronic monitoring systems using cameras in a surveillance capacity on several catcher/processors in the North Pacific groundfish fisheries off Alaska. In those applications, electronic monitoring is stable and functions as another set of eyes for an observer to see areas that are blocked from their line of sight, and to provide a preserved record of vessel activities when the observer is not present. However, data collected by these surveillance systems are not routinely extracted for fisheries management.

NMFS seeks to develop capacity, both in and out of house, for video deployment, review, and information extraction at the inception of the restructured program. NMFS presented an initial draft of regulations to implement the restructured Observer Program to the Committee in September 2011 and to the Council at its October 2011 meeting. The initial draft regulations included a provision that would have required vessels selected for coverage in the vessel selection pool to have either an observer or an electronic monitoring system onboard the vessel for the duration of the selection. Upon further review, concerns were raised about the legality of requiring electronic monitoring on vessels since NMFS has not yet developed performance standards or technical specifications for electronic monitoring. Subsequently, this provision was revised such that the only observer requirement for a vessel selected for coverage would be that an observer be onboard for the duration required. Upon release from the requirement to carry an observer (described above), NMFS may provide an electronic monitoring system for use on a vessel if the operator coordinates with NMFS to make his or her vessel available for evaluation and installation of electronic monitoring equipment. However, NMFS would not have the authority to require a vessel to carry electronic monitoring equipment as part of this proposed rule.

The Council passed a motion at its October 2011 meeting which noted that NMFS will need to prioritize vessels that are suited for electronic monitoring and that initial efforts to use electronic video monitoring as a substitute for an observer would focus on hook-and-line vessels less than 57.5 ft. LOA fishing for halibut and sablefish IFQ. A lag is expected between the collection and review of camera-collected catch composition data; therefore, the Committee and Council recommended halibut and sablefish IFQ vessels greater than or equal to 40 ft. LOA but less than 57.5 ft. LOA for initial eligibility for electronic monitoring as NMFS does not rely on data collected at-sea for inseason management of these fisheries.

Electronic video monitoring for catch composition is still under development and the existing technology will likely improve with further refinement. NMFS encourages vendors to continue to develop the capacity to deploy and service electronic monitoring systems for Federal fisheries off Alaska. Dependent on funding, NMFS will look to develop the capacity to deploy electronic monitoring in all cases where it would be the best alternative for information collection.

g. Vessels Initially Set Aside From a Selection Pool

Under the proposed deployment system, NMFS would determine, on an annual basis, which vessel categories would be subject to the trip selection pool and which would be subject to the vessel selection pool. The fraction of each pool that is observed will depend on data needed for management of the fisheries and on the revenue generated for observer coverage through the ex-vessel value-based observer fee. Section 3.2.10 of the analysis describes the sequential development of the observer deployment design, ranging from a pilot design based on a minimal amount of prior information about the fisheries, to full optimization designed to minimize the variance in catch estimates. The process employed by NMFS to allocate observer coverage would become more precise over time as information is collected under the randomized design, permitting estimates of variance within and among vessel categories. Thus, from year to year, the criteria for which partial coverage category vessels are in each pool may be adjusted to increase the sampling efficiency. The coverage rates may also vary among selection pools, and the probability of selection from some vessel categories may be low to none.

NMFS analyzed landings information to arrive at a minimum vessel length for inclusion in the vessel selection pool for the initial year of the restructured program. Full details are provided in section 3.2.7 of the analysis (see **ADDRESSES**). NMFS grouped historic data on total landed weight by vessel properties that are known before a trip begins (e.g., vessel length and gear type). It was important to group landing data by known vessel properties since observers are deployed prior to a landing and properties such as the target species are determined after the fishing trip. NMFS sought to maximize the sampling efficiency and precision in the resulting estimates by defining vessel length and gear type groups to minimize the variation in landed weight within a group and maximize the variation in landed weight between groups. The first grouping property was ''gear type'' due to large differences in landed weight between trawl and fixed (hook-and-line and pot) gear. The second grouping property was vessel length with a break in landed weights from vessels below and above 57.5 ft. LOA. Since there were no trawl vessels below 57.5 ft. LOA, this effectively separated trawl vessels. However, there were a large number of fixed gear vessels less than 57.5 ft. LOA. Landings made in 2007 and 2008 from vessels up to 57.5 ft. LOA using fixed gear were further analyzed to determine the vessel length where the amount of fish harvested per trip was significantly lower than the amount harvested by larger vessels. Section 3.2.7.2 of the analysis (see **ADDRESSES**) concluded that a vessel length of 39 ft. LOA was the break point below which the amount of harvest per trip was different than the amount of harvest per trip for larger vessels. NMFS rounded that length up to 40 ft. LOA as a vessel length below which observers would not be deployed in the initial year(s) of the program. NMFS also would not place observers on catcher vessels using jig gear in the first year of the restructured program due to the low weight of fish harvested annually by this gear type relative to other gear types.

Consistent with existing observer coverage requirements, the operator of a groundfish catcher vessel delivering an unsorted cod end to a mothership would not be required to notify NMFS

of his or her intent to embark on a fishing trip, carry an observer, or pay the ex-vessel value-based fee. The catch from these vessels would continue to be sampled by the observer aboard the mothership. Under the proposed rule the mothership operator would continue to contract directly with an observer provider for the required coverage. Groundfish or halibut landings from catcher vessels in the partial coverage category that is retrieved (sorted) onboard the catcher vessel before delivery to the mothership would be subject to the fee assessment and observer coverage under the new funding and deployment system.

Vessels designated on an FFP would be included in observer coverage requirements when directed fishing for groundfish in federally managed or State parallel groundfish fisheries; however, they would not be required to carry an observer or hail-in to the Deployment System when participating in groundfish fisheries that are managed by the State in State waters where harvests are not deducted from the Federal TAC. Finally, with the exception of vessels fishing halibut and sablefish IFQ or halibut CDQ, vessels without an FFP would not be required to comply with Federal observer coverage requirements.

C. Shoreside Processor and Stationary Floating Processor Observer Coverage

With three exceptions, existing observer coverage requirements for shoreside processors and stationary floating processors are based on the weight of groundfish delivered to the plant each month. A plant that receives at least 1,000 mt of groundfish in a month is required to have an observer present at the facility each day it processes or receives groundfish. A plant that receives between 500 mt and 1,000 mt of groundfish in a month is required to have an observer at the facility at least 30 percent of the days it processes or receives groundfish. Plants that receive less than 500 mt of groundfish in a month are not required to have an observer. The duties of observers in plants consist of compliance monitoring (e.g., verifying delivery weights recorded by scales), identifying and counting salmon bycatch in certain fisheries, and collection of biological samples to meet various science and management objectives.

Exceptions to the existing weight-based observer requirements for plants include plants receiving CDQ groundfish or species harvested under the GOA Rockfish Program and AFA inshore processors receiving pollock from the BSAI. These plants are required to have an observer present at all times while these deliveries are being received or processed. When receiving BS pollock or GOA Rockfish Program deliveries, each plant is required to have a Catch Monitoring and Control Plan (CMCP) that defines how fish will be sorted and weighed during these deliveries. In these fisheries, the plant observer is responsible for confirming that a plant's activities conform to its stated CMCP.

Consistent with the dual coverage categories for vessels, the proposed rule would create two observer coverage categories for shoreside and stationary floating processing plants—full and partial. Classification in the coverage categories would be based on fishery management and monitoring needs and would replace existing requirements based on the weight of fish processed per month. The role of observers in plants in the partial coverage category would remain compliance monitoring, composition sampling as needed and biological information collection. With the exception of plants when receiving BS pollock (AFA and CDQ), all shoreside and stationary floating plants possessing a Federal Processing Permit (FPP) would be included in the partial coverage category and would pay the ex-vessel value-based fee to NMFS for their observer coverage. NMFS would deploy observers directly and plant operators would no longer contract with observer providers for their coverage.

The new funding and deployment system proposed by this rule would allow NMFS to deploy observers in plants in a randomized fashion according to management needs. The increased flexibility in observer deployment relative to the current program expected through the proposed funding and deployment system would eliminate the need for plants to be observed 100 percent of the days they receive or process groundfish. Deliveries of BS pollock harvested by AFA and CDQ vessels are the exception, and full coverage would continue to be required for plants when taking deliveries of BS pollock as observers are needed to conduct a full census of incidentally harvested Chinook salmon. All other deliveries could be adequately monitored for compliance and biological data collection at a rate of less than 100 percent through a randomized sampling design. Based on this rationale, the proposed rule would remove the current requirements for 100 percent observer coverage for shoreside processing plants and stationary floating processor plants receiving groundfish CDQ, GOA Rockfish Program, and AI pollock deliveries.

Processing plants would be in the full coverage category when receiving BS pollock and would contract directly for their observer coverage with permitted observer providers under the existing Observer Program funding and deployment system. These same plants would be in the partial coverage category for all other groundfish and halibut deliveries.

Observers in the processing plants in the partial coverage category would be assigned to multiple shoreside plants under a randomized design to fulfill NMFS' monitoring needs. Unlike the two-pool selection and hail-in system for vessels, there would not be such a selection system and notification requirement for shoreside plants. Observers would be assigned to ports and randomly assigned by NMFS to offloads as they occur using the existing operation notification requirements at § 679.50 for shoreside processors and stationary floating processors which require managers to notify observers of planned facility operations and expected receipt of groundfish prior to receipt of those fish. NMFS would notify a plant when it is randomly selected for coverage. An observer would be assigned to a plant for the duration of a randomly selected offload. The probability of selection for an observed offload would vary according to the types of deliveries a plant receives. The probability of selection would be higher for plants that receive deliveries from the GOA Rockfish Program due to the need for rapid turnaround and transmission of data. Random assignment of observers to plants would maximize the efficiency of the plant observer and increase the likelihood that biological samples are taken throughout the fishing season, thus providing an unbiased estimate of the fleet's catch as required for stock assessments. Actual sample sizes (number of deliveries observed or number of biological samples obtained) and resulting sampling fractions (observed vs. total deliveries) would depend on the amount of revenue generated in prior years from the ex-vessel value-based fee and the number of trips completed in the fishing year.

D. Observer Coverage in CDQ Fisheries

Observer coverage requirements for vessels participating in the groundfish and halibut CDQ fisheries would be structured to comply with section 305(i)(1)(B)(iv) of the MSA, which requires that the harvest of allocations under the CDQ program for fisheries with IFQs or fishing cooperatives shall

be regulated no more restrictively than for other participants in the applicable non-CDQ sector. This requirement is described in more detail in a final rule implementing regulatory amendments to comply with this provision (77 FR 6492; February 8, 2012). Observer coverage requirements for vessels halibut CDQ fishing and fixed gear sablefish CDQ fishing would be the same as requirements that apply for the halibut and fixed gear sablefish IFQ Programs. Catcher/processors would be in the full coverage category, and catcher vessels would be in the partial coverage category. Observer coverage requirements for vessels pollock CDQ fishing would be the same as the requirements that apply to vessels directed fishing for pollock in the BS under the AFA. Catcher/processors, motherships, and catcher vessels would be in the full coverage category. Observer coverage requirements for catcher/processors using trawl gear in the CDQ fisheries for species other than pollock would be the same as the requirements that apply to the ''non-AFA trawl catcher/processors'' under the Amendment 80 Program. These catcher/processors would be in the full coverage category.

If a voluntary cooperative exists in a non-CDQ sector, the same observer coverage requirements that apply to these vessels while they are fishing under a voluntary cooperative would apply while they are participating in CDQ fisheries. A voluntary cooperative currently exists among the catcher/processors using hook-and-line gear to harvest Pacific cod in the BSAI. If the voluntary cooperative receives an exemption from the operational requirements at § 679.32(c)(3)(i) from NMFS pursuant to § 679.32(e), the catcher/processors in the voluntary cooperative, when CDQ fishing, would be required to comply with the same observer coverage requirements that apply to them in the non-CDQ fisheries. Under this proposed rule, these catcher/processors would be in the full coverage category for both their non-CDQ and CDQ fishing.

Additional experience requirements for observers in some of the CDQ fisheries would be maintained, as described in proposed new § 679.51(a)(2)(vi)(A). With one exception, existing level 2 and lead level 2 observer experience requirements at § 679.50 would be required for CDQ vessel observers in the full coverage category. The one exception is that catcher/processors using hook-and-line gear that participate in a voluntary cooperative in a non-CDQ fishery would not be subject to these additional requirements while CDQ fishing, if NMFS approved such an exemption for these vessels under § 679.32(e).

The only remaining vessel categories in the CDQ fisheries that were not covered by the CDQ regulation of harvest final rule are catcher vessels participating in CDQ fisheries for groundfish other than sablefish or pollock. NMFS proposes to place catcher vessels using pot or jig gear in the CDQ fisheries in the partial observer coverage category because halibut prohibited species catch by these vessels does not accrue against the halibut prohibited species catch limit. Catcher vessels using hook-and-line gear or trawl gear would be placed in the full coverage category because their prohibited species bycatch accrues against the CDQ group's transferable prohibited species bycatch allocations.

TABLE 5—OBSERVER COVERAGE REQUIREMENTS THAT WOULD APPLY TO VESSELS PARTICIPATING IN THE GROUNDFISH AND HALIBUT CDQ FISHERIES UNDER THIS PROPOSED RULE

Fishery or vessel category	Trawl gear	Catcher vessels using		Catcher/processors	Motherships
		Hook-and-line gear	Pot or jig gear		
Are in the following observer coverage categories:					
Halibut CDQ	n/a	partial	n/a	full	n/a.
Sablefish CDQ	full	partial	partial	full	n/a.
Pollock CDQ	full	n/a	n/a	full	full.
Other Groundfish CDQ	full	full	partial	full	full.

E. Observer Provider and Observer Responsibilities

Current responsibilities for observer providers and observers are detailed in the regulations at 50 CFR 679.50(i) and (j). This proposed rule would retain these requirements and responsibilities for observer providers (under proposed new § 679.52) and observers (under proposed new § 679.53) serving operations in the full coverage category. The current responsibilities would not apply to observer providers and observers serving the partial coverage category. For the partial coverage category, NMFS would contract with observer providers instead of issuing permits to them as under the current Observer Program. NMFS' contracts with providers would include a statement of work with performance measures. The Federal contracts would stipulate the time frame of the contract, set minimum observer pay and benefit requirements, observer deployment logistics and limitations, limitations on conflict of interest, communications with observers and with NMFS, requirements to provide qualified observers in a timely manner, and other aspects to ensure high quality observer data are available for management. Moreover, observer qualifications, training requirements, and performance expectations would be defined in contracts with observer providers such that the contents of the existing § 679.50(j) (which would be amended to § 679.53) would not apply to observer services provided through direct government contracts. Instead of the level 2 observer and lead level 2 observer endorsements currently stipulated through regulations at § 679.50(j)(1)(v)(D), (the proposed new § 679.53(a)(5)(iv)), qualification requirements for observers serving in the partial observer coverage category would be specified in NMFS' contracts with observer providers. NMFS expects this will increase NMFS' ability to match observer skill with sampling complexity and provide NMFS with increased flexibility to respond to changing fisheries management needs, which is a primary objective of restructuring.

NMFS recognizes that an observer provider could simultaneously contract directly with NMFS and the industry and thereby be subject to different requirements under the two different funding and deployment systems.

Observers would have to be certified according to the requirements of current paragraph § 679.50(j) (which would be proposed new § 679.53) to observe full coverage category fisheries while observers working for providers in the partial coverage category would have different performance requirements and would not have a certification per se.

F. U.S. Coast Guard Safety Decal

Current regulations at § 600.746 and § 679.50 require all vessels to pass a U.S. Coast Guard Commercial Fishing Vessel Safety Examination prior to carrying an observer. This requirement would pertain to all vessels that would be required to carry an observer under this proposed rule. The existing exemption for vessels less than 26 ft. LOA in remote locations would be maintained under this proposed rule; all other vessels without a valid safety decal would continue to be considered inadequate for carrying an observer. Observers are instructed not to board a vessel if the safety decal is absent or expired. An operator's obligation to carry an observer when selected would not be obviated for lack of a valid safety decal, rather, the operator would be prohibited from embarking on a selected trip. Therefore, it behooves any vessel eligible to be selected for observer coverage to undergo a U.S. Coast Guard safety equipment examination prior to being selected to carry an observer to avoid potential fishing delays for lack of a current safety decal. Once issued, the decal is valid for 2 years. Dockside examinations for U.S. Coast Guard safety decals may be arranged by contacting the U.S. Coast Guard (see **ADDRESSES**).

G. Ex-Vessel Value-Based Observer Fee

Observer coverage in the proposed partial coverage category would be funded through revenue generated from an ex-vessel value-based fee. The Council approved a 1.25 percent ex-vessel value-based observer fee to be paid by all groundfish and halibut vessels and processors for landings and fish subject to the observer fee. Examples of these landings and fish are described in a later section. Section 2.9.2 of the analysis (see **ADDRESSES**) describes which observer deployment costs are authorized and which would be intended to be covered with the ex-vessel value fee proceeds, and which costs NMFS would fund through agency contributions. NMFS would prepare an annual report on the financial aspects of the restructured program and the revenues provided by the 1.25 percent ex-vessel fee. The Council would review the 1.25 percent ex-vessel value fee percentage after completion of the second year of observer deployment in the restructured program. The Council could revise the fee assessment percentage in a subsequent rule at any time, upon evaluation of program revenues and costs, observer coverage levels, fishery management objectives, and future deployment plans. This report would be provided to the Council at the same time NMFS would provide the annual deployment plan.

Ex-vessel value refers to the price paid to fishermen for their raw, unprocessed catch. The objective of the ex-vessel value-based fee is to collect 1.25 percent of the ex-vessel value of each groundfish and halibut landing from operations in the partial coverage category. NMFS applied several principles to develop proposed methods to derive the ex-vessel value of groundfish and halibut landings for purposes of the observer fee. The ex-vessel value fee should be: broad-based such that all fishery partial coverage category participants pay a share; fair and equitable among participants; easy to collect without undue burden on participants; assessed on any post-season price settlements or retroactive payments in addition to assessments at the time of landing; account for non-monetary exchange of fish or other forms of compensation; and assessed on weight equivalents used to debit quotas (e.g., round weight for groundfish and headed and gutted weight for halibut). Observer fees would not be linked to the actual level of observer coverage for individual vessels and plants as it is under the current program. Instead, each participant in the partial coverage category would pay an equal percentage of the value they derive from the groundfish and halibut fisheries to contribute toward the cost of collecting observer data for conservation and management of the fisheries as a whole.

1. Standard Ex-Vessel Prices

NMFS would annually establish standard ex-vessel prices for species subject to the observer fee. These prices would be used in assessing fees and in estimating the total ex-vessel value of the fisheries for the coming year. To avoid new reporting requirements for participants in the partial coverage category, NMFS would use existing reports and ex-vessel value determinations to establish standard prices for groundfish and halibut landings for purposes of the observer fee. Proposed data sources for ex-vessel price information are NMFS' halibut and sablefish IFQ Buyer Report, and the State of Alaska's Commercial Fishery Entry Commission's (CFEC) gross revenue data, which are based on the Commercial Operator Annual Report (COAR) and ADF&G fish tickets. Section 2.9.2 of the analysis (see **ADDRESSES**) describes the data sources evaluated by NMFS to develop the proposed fee derivation method.

2. Halibut and Sablefish Standard Prices

NMFS collects IFQ cost recovery fees at the start of each year to recover costs incurred by the agency for IFQ program management in the previous year. Regulations at § 679.5(l)(7)(i)(B) require an IFQ Registered Buyer, that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut, to submit annually to NMFS a complete IFQ Buyer Report by October 15 of the year the Registered Buyer receives IFQ fish. The IFQ Buyer Report includes information on the pounds purchased and values paid (with price adjustments) for each IFQ species by port or port group and month. Information provided through the IFQ Buyer Reports is used to generate standard prices for ex-vessel value-based cost recovery fees collected under the authority of the MSA section 304(d)(2)(A).

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. The standard prices are calculated in U.S. dollars per IFQ equivalent pound for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) is the weight (in pounds) for an IFQ landing, calculated as the round weight for sablefish and headed and gutted net weight for halibut.

Under the proposed rule, volume and value data collected on the IFQ Buyer's report would be used to calculate the standard ex-vessel prices to determine the value in the following year for purposes of the observer fee for halibut IFQ and CDQ landings, sablefish IFQ landings, and sablefish landings that accrue against the fixed gear sablefish CDQ allocation by catcher vessels in the partial coverage category. Observer fees would be assessed on all landings in a year to pay for observer coverage in the following year.

Catcher vessels harvesting halibut CDQ would be in the partial observer coverage category, and landings of halibut CDQ by these vessels would be subject to the observer fee. However, because halibut CDQ is not yet included in a cost recovery program, no data about the ex-vessel value of halibut CDQ is currently collected by NMFS. Therefore, this proposed rule would require that Registered Buyers submit, on the IFQ Buyer Report, the pounds

purchased and values paid for halibut CDQ. These additional data about halibut CDQ would not be used to calculate standard ex-vessel prices for the IFQ cost recovery program. However, the data for both halibut IFQ and halibut CDQ would be combined by NMFS to calculate an average annual standard ex-vessel price for halibut by port or port-group for the observer fee. While the standard ex-vessel prices for halibut IFQ for the cost recovery program are calculated monthly by port or port-group, the observer fee standard ex-vessel prices would be calculated as a single annual average for halibut IFQ and halibut CDQ combined, by port or port-group.

Catcher vessels harvesting fixed gear sablefish CDQ would be in the partial observer coverage category and landings of fixed gear sablefish CDQ by these vessels would be subject to the observer fee. NMFS proposes to use existing data collected about the pounds purchased and values paid for sablefish IFQ to calculate the standard ex-vessel prices to determine the observer fee liability for fixed gear sablefish CDQ. NMFS does not propose to require Registered Buyers to submit additional information about sablefish CDQ on the IFQ Buyer Report because, unlike sablefish IFQ, fixed gear sablefish CDQ is not required to be delivered to a Registered Buyer.

The standard ex-vessel prices used to determine the observer fee for halibut and fixed gear sablefish would be published in the **Federal Register** in the annual notice of standard ex-vessel prices that will apply to groundfish and halibut landings subject to the observer fee. Under the IFQ cost recovery program, data from ports are combined to protect confidentiality in cases where price information is provided by less than three processors. The port and port groups used to collect the observer fee under this proposed rule could be different from the ports or port groups used to collect cost recovery fees because the observer fee is an annual price, thus, the number of buyers and harvesters in a port may allow information to be reported where it would be confidential for some or all of the individual months.

3. Groundfish Standard Ex-Vessel Prices

NMFS would calculate standard prices for all groundfish, except fixed gear sablefish, by averaging the most recent annual prices from the State of Alaska's CFEC for their gross earnings estimates by the applicable species, port of landing, and gear combinations. Three gear categories would be established: pelagic trawl gear, non-pelagic trawl gear, and all other gear. Section 2.9.2 of the analysis (see **ADDRESSES**) describes the methods employed by the CFEC to estimate ex-vessel prices based initially on landings data from ADF&G fish tickets and ultimately refined with information from the COAR. The COAR contains statewide buying and production information and is generally considered the best routinely collected information to determine the ex-vessel value of groundfish harvested from waters off Alaska. The COAR is completed by the first buyers of fish harvested from State and Federal waters off the coast of Alaska. Post-season price adjustments and bonuses paid to harvesters are required to be reported in the COAR. The report is due to the ADF&G by April 1 of the year after the fishing occurred. The standard, average price would be weighted by the amount of pounds at each price for each species, port, and gear combination.

CFEC ex-vessel prices are available in the fall of the year following the year the fishing occurred. Thus, in any given year, it is not possible to base ex-vessel fee liabilities on standard prices that are less than two years old. For example, the most recent standard prices available for the determination of liabilities in 2013 will be those from 2011. Notwithstanding this limitation, the COAR data were determined to comprise the best available information to establish the ex-vessel value of the groundfish fisheries off Alaska.

The proposed approach to establish the ex-vessel value for the purpose of the observer fee would apply price information from earlier years to current year harvest volumes. Fish prices and harvest volumes vary annually. Thus, a value estimate based on price information from earlier years would not equate to the true ex-vessel value for a particular year. As noted, a 2-year lag would occur between the date fish are landed and when standard prices for those landings are applied. Section 2.9.2.2.4 of the analysis (see **ADDRESSES**) shows potential impacts of the time lag on the ex-vessel value estimated with prior-year and current-year information from 2001 through 2009. The time lagged ex-vessel value estimate was lower than the actual ex-vessel value over most of the years considered. Thus, while it would be possible for the ex-vessel value fee to exceed 1.25 percent of the actual ex-vessel value in a particular year, over two to three years, the 1.25 percent fee percentage would likely not be exceeded.

The effect of averaging the standard price estimates over multiple years was evaluated in section 2.9.2.2.4 of the analysis (see **ADDRESSES**) as a way to stabilize interannual variability in fish prices and thus, ex-vessel value fees and resulting revenue for observer coverage. Increasing the period of time over which prices are averaged decreases the effect of a price that is substantially different from other years on the average price. Using fewer years for the average price allows the price to respond more quickly to increases or decreases in ex-vessel price. Three, five, and seven-year averages were considered in section 2.9.2.2.4 of the analysis (see **ADDRESSES**). The Council balanced the need to use recent and relevant data against the need to reduce the possible undue influence of unusual annual values, and selected the 3-year average as part of its preferred alternative. Thus, standard groundfish (except fixed gear sablefish) ex-vessel prices for observer fees would be the 3-year average of the price estimated for each species, gear, and port combination.

4. Confidential Data

Standard prices that would apply to groundfish and halibut landings in the upcoming year would be published in the **Federal Register** each December. NMFS would adhere to applicable guidance for protecting confidentiality of data submitted to or collected by NMFS, and for shared ADF&G/CFEC and NOAA data, as prescribed by a Reciprocal Data Access Agreement (1999) which meet or exceed the stringent confidential data handling and disclosure. Therefore, pursuant to guidance restricting disclosure of confidential data, but allowing disclosure of aggregated data, NMFS would not publish any price information that would permit the identification of an individual or business. For example, at least four persons would need to make landings of a species with a particular gear type at each port in order for NMFS to publish those price data at the level of individual ports. Price data that would be confidential due to the 4-person minimum would be aggregated by subarea in the BSAI (BS subarea and AI subarea) and by regulatory area in the GOA (Eastern GOA, Central GOA, and Western GOA). If confidentiality requirements are still not met by aggregating prices across ports at the subarea or regulatory area level, they would be aggregated at the level of GOA and BSAI or statewide.

5. Landings Subject to an Observer Fee

Vessels and processors subject to the proposed action commonly participate in fisheries managed under State or Federal jurisdiction. Most federally managed fisheries occur in the EEZ and

most fisheries managed by the State occur in waters within 3 nm of the coast, although some federally managed fisheries occur in State waters and vice versa. This rule proposes to distinguish between fish harvested in fisheries in State and Federal waters where catch is subtracted from the Federal TAC and fish harvested in State-managed fisheries in State waters where catch is subtracted from a guideline harvest level (GHL).

Groundfish which accrue against a Federal TAC are those listed in Table 2a to part 679. The current list of groundfish species in Table 2a to part 679 is shown in Table 6 below. These are the groundfish species that would be subject to the observer fee. Table 2a to part 679 is amended periodically to reflect species added or removed from management under the FMPs. In the future, the observer fee would apply to the list of groundfish species in Table 2a to part 679 at the time of landing, which may differ from the list in Table 6 below.

TABLE 6—GROUNDFISH THAT CURRENTLY ACCRUE AGAINST FEDERAL TACS AND WOULD BE SUBJECT TO THE OBSERVER FEE ASSESSMENT

Species and Species Code
Atka mackerel (193)
Pacific cod (110)
Pollock (270)
Octopus (870)
Squid (875)
Flatfish, any other flatfish species without separate codes (120)
Alaska plaice (133)
Arrowtooth flounder (121)
Bering flounder (116)
Kamchatka flounder (117)
Starry flounder (129)
Greenland turbot (134)
Sablefish, blackcod (710)
Sculpins (160)
SHARKS
Pacific sleeper shark (692)
Salmon shark (690)
Spiny dogfish (691)
Other sharks (689)
SKATES
Whiteblotched skate (705)
Aleutian skate (704)

TABLE 6—GROUNDFISH THAT CURRENTLY ACCRUE AGAINST FEDERAL TACS AND WOULD BE SUBJECT TO THE OBSERVER FEE ASSESSMENT—Continued

Species and Species Code
Alaska skate (703)
Big skate (702)
Longnose skate (701)
Other skates, any other skate species without separate codes (700)
SOLE
Butter sole (126)
Dover sole (124)
English sole (128)
Flathead sole (122)
Petrale sole (131)
Rex sole (125)
Rock sole (123)
Sand sole (132)
Yellowfin sole (127)
ROCKFISH
Aurora (185)
Black—BSAI only (142)
Blackgill (177)
Blue—BSAI only (167)
Bocaccio (137)
Canary (146)
Chilipepper (178)
China (149)
Copper (138)
Darkblotched (159)
Dusky (172)
Greenstriped (135)
Harlequin (176)
Northern (136)
Pacific ocean perch (141)
Pygmy (179)
Quillback (147)
Redbanded (153)
Redstripe (158)
Rosethorn (150)
Rougheye (151)
Sharpchin (166)
Shortbelly (181)
Shortraker (152)
Silvergray (157)
Splitnose (182)
Stripetail (183)
Thornyhead, all *Sebastolobus* species, (143)
Tiger (148)
Vermilion (184)
Widow (156)
Yelloweye (145)
Yellowmouth (175)
Yellowtail (155)

The objective of the observer fee assessment is to levy a fee on all landings accruing against the Federal TAC made by vessels that are subject to Federal regulations and not included in the full coverage category. Therefore, a fee would only be assessed on landings from vessels designated on an FFP or from vessels landing IFQ or CDQ halibut or IFQ sablefish. Within the subset of vessels subject to the observer fee, only landings accruing against the Federal TAC would be included in the fee assessment. Table 7 provides additional information about which landings would and would not be subject to the observer fee.

If a vessel is designated on an FFP, the only groundfish landings that would not be subject to the ex-vessel value-based fee are landings of Pacific cod, pollock, and sablefish accruing against the State GHL, or landings of groundfish species that do not accrue against a Federal TAC (those not listed in Table 2a to part 679, such as lingcod or dark rockfish, or groundfish retained as bait and not sold). Groundfish accruing against a Federal TAC and landed in conjunction with GHL Pacific cod, pollock, or sablefish would be included in the observer fee assessment if delivered by a vessel named on an FFP and excluded from the observer fee assessment if the vessel does not possess an FFP.

If a vessel is being used to conduct fishing that does not require that vessel be named on an FFP, then none of the groundfish, other than sablefish IFQ, landed by that vessel would be subject to the observer fee assessment, even if those groundfish are listed in Table 2a to part 679 and accrue against a Federal TAC. Landings of IFQ or CDQ halibut or IFQ sablefish by vessels in the partial observer coverage category would be subject to the observer fee even if those vessels were conducting fishing that did not require an FFP.

TABLE 7—LANDINGS THAT WOULD BE SUBJECT TO THE OBSERVER FEE ASSESSMENT FOR VESSELS WITH AND WITHOUT AN FFP

If fish in the landing is from the following fishery or species	Is fish from the landing subject to the observer fee?	
	If the vessel is not designated on an FFP or required to be designated on an FFP	If the vessel is designated on an FFP or required to be designated on an FFP
(1) Groundfish listed in Table 2a to part 679 (FMP groundfish) that is harvested in *the EEZ* and subtracted from a total allowable catch limit specified under § 679.20(a)		
Includes:		

TABLE 7—LANDINGS THAT WOULD BE SUBJECT TO THE OBSERVER FEE ASSESSMENT FOR VESSELS WITH AND WITHOUT AN FFP—Continued

If fish in the landing is from the following fishery or species	Is fish from the landing subject to the observer fee?	
	If the vessel is not designated on an FFP or required to be designated on an FFP	If the vessel is designated on an FFP or required to be designated on an FFP
• FMP groundfish landed while fishing for halibut IFQ, halibut CDQ, sablefish IFQ, or salmon (troll) in the EEZ. • Groundfish CDQ. • Demersal shelf rockfish in the Southeast Outside District of the GOA. • Black rockfish and blue rockfish in the BSAI. • FMP groundfish sold for bait (disposition code = 62).	not applicable, an FFP is required to harvest these groundfish in the EEZ.	Yes.
(2) Groundfish listed in Table 2a to part 679 that is harvested in *Alaska State waters* and subtracted from a total allowable catch limit specified under § 679.20(a). Includes: • FMP groundfish harvested in a parallel groundfish fishery as defined at § 679.2. • FMP groundfish landed while fishing for halibut IFQ, halibut CDQ, sablefish IFQ, or salmon (troll) in Alaska State waters. • Groundfish CDQ harvested in Alaska State waters. • Demersal shelf rockfish caught in Alaska State waters adjacent to the Southeast Outside District of the GOA. • FMP groundfish that are non-target species harvested while fishing in a State of Alaska guideline harvest level (GHL) fishery for pollock, Pacific cod, or sablefish. • FMP groundfish sold for bait (disposition code = 62).	No	Yes.
(3) Sablefish IFQ, regardless of where harvested	Yes	Yes.
(4) Halibut IFQ or halibut CDQ, regardless of where harvested	Yes	Yes.
(5) Groundfish listed in Table 2a to part 679 that is harvested in the *Alaska State waters,* but is not subtracted from a total allowable catch limit specified under § 679.20(a). Includes: • Groundfish managed under State of Alaska guideline harvest levels, which currently include pollock, Pacific cod, and sablefish.	No	Yes. No.
(6) Any groundfish or other species not listed in Table 2a to part 679, except halibut IFQ or CDQ halibut, regardless of where harvested. Includes: • Lingcod. • Black rockfish and blue rockfish in the GOA. • Dark rockfish in the GOA and BSAI. • Salmon caught in the troll fishery.	No	No.
(7) FMP groundfish retained as bait and not sold (disposition code 92)	No	No.

6. Fee Determination and Collection

Under this proposed action, the 1.25 percent ex-vessel value fee liability would be split between processors or Registered Buyers and vessel owners or operators, although the split would not be in regulation. The processor or Registered Buyer would collect the vessel operator's observer fee liability at landing and remit the fee to NMFS on an annual basis. The fee liability would be determined by multiplying the standard price for groundfish by the round weight equivalent for each species and gear combination, and the standard price for halibut by the headed and gutted weight equivalent. The fee liability for each landing would be 1.25 percent of the sum of the individual species/gear combination amounts.

Information submitted to NMFS by processors and Registered Buyers via eLandings would be used to determine the fee liability for each landing. eLandings is the web-based data entry component of the Interagency Electronic Reporting System that allows processors, Registered Buyers, and others to submit, edit, and summarize landings, production, discard, and disposition data. When reports of catch and production are submitted via eLandings they are available to NMFS, the International Pacific Halibut Commission, and ADF&G in near real-time. Registered buyers who do not process any groundfish and are not able to use eLandings use an alternate electronic reporting system (the ''legacy'' IFQ system). If Registered Buyers need to make changes to IFQ reports then they are required to file manual landing reports with NMFS and that information is entered into the halibut and sablefish IFQ accounting system by NMFS contractors.

Under existing regulations, processors and Registered Buyers enter delivery information including the weight of each species of fish in the landing into eLandings or, in some cases for halibut and sablefish, through an alternate electronic reporting system or manual landing report to NMFS. Originally, NMFS envisioned that the standard ex-vessel prices would be entered into eLandings at the beginning of each year. Further, that eLandings would be programmed to calculate the fee liability for each landing based on the landing weights entered by the processor for each species and the pre-programmed prices. However, upon further review,

NMFS has determined that the information entered by processors in eLandings does not provide all of the information necessary to determine if a landing is subject to the observer fee. Specifically, eLandings is not designed to perform some functions of NMFS' CAS that are needed to determine if landings of fish harvested in State waters accrue against the Federal TAC or the GHL and thus whether or not the landing would be subject to the observer fee. These determinations are made through NMFS' CAS and the State's examination of landing reports (ADF&G fish tickets). Although NMFS could program eLandings to allow the processor to designate whether the groundfish from a landing accrued against a Federal TAC, the processor may not have all of the information to make that determination and could inadvertently assign catch to the wrong category, thereby generating inaccurate information about the observer fee liability associated with the landing. In addition, halibut IFQ and CDQ landings or sablefish IFQ landings reports submitted via the legacy reporting system or manual landing report do not always get entered into eLandings, so information about the fee liability associated with each landing could not be provided to the Registered Buyer via eLandings for these landings.

As an alternative to providing fee liability information through eLandings, NMFS would develop a separate web-based application that would assess each landing report submitted via eLandings and each manual landing entered into the IFQ landing database and determine if the landing is subject to the observer fee and, if it is, which groundfish in the landing is subject to the observer fee. For any groundfish or halibut subject to the observer fee, the web-application would apply the appropriate standard ex-vessel prices for the species, gear type, and port, and calculate the observer fee liability associated with the landing. All processors and Registered Buyers would have access to the web-application through a user id and password issued by NMFS. This information generally would be available within 24 hours of the time that the landing report was submitted via eLandings or the manual landing report was submitted to NMFS. NMFS would expedite the availability of observer fee calculations for halibut to the extent possible to accommodate the common practice of rapid settlements between buyers and harvesters for halibut landings. Processors would deduct the harvester's fee liability from their payment and add the processor's portion of the fee liability. Reports, such as a receipt of the fee liability for each landing, would be available through the observer fee web-application. Processors could provide a copy of these reports to harvesters for their records. The information generated by this web-application also would provide the annual billing for the processors and Registered Buyers. The fee remittal process would be as follows:

1. Annually, NMFS would publish a standard price per pound by port, species, and gear type in the **Federal Register**.
2. NMFS would program the most recent standard prices into an observer fee web-based application at the beginning of each year.
3. Processors would enter the delivery information and the pounds of each species landed into eLandings.
4. The observer fee web-application would evaluate the landings report and calculate the fee liability for the landing. This information will generally be available within 24 hours of receipt of the report.
5. Processors could access the web-based application at least 24 hours after submitting a report to view the landing-specific observer fee liability information and to print a copy of the fee liability report for harvesters.
6. Processors would withhold the vessel operator's portion and self-collect the processor's portion of the observer fee liability.
7. By January 15 of each year, NMFS would invoice processors for the total fee liability determined by the sum of the fees reported by the observer fee web-application for each processor for the prior calendar year.
8. Processors would remit the fees to NMFS electronically by February 15.
9. NMFS would audit the payments to ensure all liabilities are paid in full.

The Council requested that NMFS determine, during the development of the regulations, whether current-year ex-vessel prices could be used to determine the ex-vessel observer fee using a billing system similar to the halibut and sablefish IFQ cost recovery fee program to collect fees from processors and harvesters. NMFS continues to propose the method by which shoreside processors and Registered Buyers would be informed in December of the standard ex-vessel prices that would apply for landings in the upcoming year, and billed in the beginning of the next calendar year for all landings in the prior year. The standard ex-vessel prices would be established by using data reported on the COAR and the IFQ Registered Buyer's Report. Section 2.9.2 of the analysis (see **ADDRESSES**) explains why basing the ex-vessel value fee on current-year prices would not be feasible and that standard prices based on prior years' data would need to be established to determine the ex-vessel value of landings for purposes of the observer fee. A fee collection system similar to the one used to collect cost recovery fees for IFQ halibut and sablefish would require processors to submit a buyer's report to NMFS that would virtually duplicate the information collected through the COAR. This would also require NMFS to duplicate the process used by the State CFEC to estimate gross earnings and arrive at standard prices. Moreover, a fundamental component of the proposed observer fee is that shoreside processors and Registered Buyers would collect half of the fee liability from fishermen at the time of landing. This collection can only be done if the shoreside processors and fishermen know the amount of the fee liability associated with each landing at the time of landing. This would not be possible using current year's prices, because these prices are not available until the end of the year, or in the case of data from the COAR, until late the next year. Using current years' prices would require NMFS to invoice each vessel operator and shoreside processor in the partial coverage category, rather than just the shoreside processors and Registered Buyers thereby increasing NMFS' administrative costs substantially.

7. Payment Compliance

An FPP or Registered Buyer permit holder who has incurred a fee liability would be required to pay the fee to NMFS by February 15 of the year following the calendar year in which the landing was made. Full payment of the observer fee liability would be required before NMFS would issue a new or renewed FPP or Registered Buyer permit.

If an FPP or Registered Buyer permit holder (permit holder) makes a timely payment to NMFS of an amount less than the fee liability NMFS estimated, the permit holder would have the burden of demonstrating that the fee amount submitted is correct. If, upon preliminary review of the accuracy and completeness of a fee payment and the Fee Submission Form, NMFS determines the permit holder has not paid a sufficient amount, NMFS would notify the permit holder by letter. NMFS would explain the discrepancy and the permit holder would have 30 days to either pay the remaining amount that

NMFS determined should be paid or provide evidence that the amount paid is correct. In the meantime, any applications for new or renewed FPP or Registered Buyer Permits for the permit holder would be deemed incomplete and would not be approved by NMFS.

If the permit holder submits evidence in support of his or her payment, NMFS will evaluate it and, if there is any remaining disagreement as to the appropriate observer fee, prepare an Initial Administrative Determination (IAD). The IAD would set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. A permit holder disagreeing with the IAD could appeal an IAD through the NMFS Office of Administrative Appeals as described in existing regulations at 50 CFR 679.43. An IAD that is not appealed within 60 days of issuance to the NMFS Office of Administrative Appeals, would become a final agency action.

During the pendency of the appeal proceedings outlined here, the following conditions would exist: The application for new or renewed FPPs or Registered Buyer Permits would not be approved by NMFS, so the FPP or Registered Buyer permit holder could not receive or process groundfish harvested from the BSAI or GOA, or IFQ or CDQ halibut or IFQ sablefish, respectively, unless they could do so under valid permits not associated with the fee liability dispute. An FPP or Registered Buyer Permit holder could pay the disputed fee difference under protest in order to allow NMFS to approve pending permit applications. If the final agency action determines that the permit holder owes additional fees and if the permit holder has not paid such fees, NMFS would deem any future, new FPP or Registered Buyer permit applications to be incomplete. If NMFS does not receive such payment within 30 days of the issuance of the final agency action, NMFS would refer the matter to the appropriate authorities within the U.S. Treasury for purposes of collection. Non-renewal of an FPP or Registered Buyer permit would not affect the permit holder's liability for observer fees incurred while they possessed or were required to possess an FPP or Registered Buyer permit.

8. Overpayment of Fees

Upon issuance of final agency action, any amount submitted by an FPP or Registered Buyer permit holder to NMFS in excess of the observer fee liability determined to be due by the final agency action would be returned to the permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future observer fee liability.

H. Federal Processor Permit and Registered Buyer Permits

Shoreside processors and stationary floating processors are required to possess a FPP to receive or process groundfish harvested in the GOA or BSAI per existing regulations at § 679.4. To receive IFQ or CDQ halibut or IFQ sablefish, a person must possess a Registered Buyer permit (§ 679.4). Currently, both FPPs and Registered Buyer permits are issued for a 3-year period which begins on January 1 of the first year and ends on December 31 of the third year. Under this proposed rule, shoreside and stationary floating processors and Registered Buyers would be required to submit the balance of the observer fee liability to NMFS by February 15 in the year after the landings occurred. To match the observer fee payment schedule proposed by this action, NMFS proposes to modify the current 3-year FPP and Registered Buyer permit cycles to an annual cycle, running from March 1 through the last day of February.

The effective FPP duration is not specified in regulations; however the effective duration for a Registered Buyer permit is specified as the date it is issued through the end of the current 3-year permit cycle. NMFS proposes to amend regulations at § 679.4(d)(3) such that a Registered Buyer permit would be effective until the date of expiration rather than a cycle of specified duration. The effective duration for FPPs and Registered Buyer permits would be from the latter of March 1 or the date of issuance, through the end of February; although these dates would not be codified in regulations consistent with the existing regulations for the FPP effective duration.

The proposed rule would require that a permit holder pay his or her observer fee liability in order to meet the requirement to submit a complete permit application. FPP or Registered Buyer Permits could be renewed online at the time the permit holder submits electronic payment to NMFS for their observer fee liability, or at any time thereafter. The fee payment and permit renewal application would be web-based and would allow the user to print their FPP or Registered Buyer Permit upon payment of observer fee. The process for new FPP and Registered Buyer Permit applications would be unchanged from the existing regulations at § 679.4; as well, the process for modifying a permit would remain unchanged from the process in the existing regulations.

The proposed rule would remove regulations at 50 CFR 679.5 (f)(2)(i) through (iv) which state the information that must be provided on the FPP application as these fields are provided on the application and are not necessary to list in the regulatory text. The regulations would be amended to refer the applicant to the Web site where the application can be accessed. This proposed rule would also amend 50 CFR 679.5(f)(2)(v) by requiring the owner or operator of a shoreside processor or shoreside floating processor to certify that the information on the application is true, correct, and complete when signing and dating his or her application for a new, amended, or renewed FPP.

NMFS would not issue a renewed FPP or Registered Buyer permit if a liable party fails to pay their observer fee liability. Shoreside and stationary floating processors and Registered Buyers would continue to be prohibited from receiving groundfish harvested from the BSAI or GOA, or IFQ or CDQ halibut without a valid permit.

Section 2.9.2.2.3 of the analysis (see **ADDRESSES**) prepared for this action noted that NMFS would suspend or revoke FPPs or Registered Buyer permits if a holder failed to pay their observer fee liability; no changes were proposed for the 3-year effective duration in the Council analysis for FPPs and Registered Buyer permits. In development of this proposed rule, NMFS identified administrative and enforcement efficiencies that could be accomplished through a modification to the effective duration for FPPs and Registered Buyer permits from a 3-year cycle to an annual cycle to coincide with the observer fee collection cycle. This proposed amendment was not part of the Council's motion, but rather was identified by NMFS as a way to increase efficiencies in program administration.

I. Annual Report and Review of the Deployment Plan and Fee Percentage

Per the Council's motion, NMFS would release a completed report by September 1 of each year. The annual report would contain detailed information on the financial aspects of the program and the annual deployment plan—the proposed stratum and coverage rates for the deployment of observers in the following calendar year. Prior to September, the Council may request its Observer Advisory Committee, Groundfish Plan Teams, or Scientific and Statistical Committee to review and comment on a draft of the annual report. NMFS would consult

with the Council each year on the deployment plan for the upcoming year. The Council would select a meeting for the annual report consultation that provides sufficient time for Council review and input to NMFS. The Council would likely need to schedule this review for its October meeting. The Council would not formally approve or disapprove the annual report, including the deployment plan, but NMFS would consult with the Council on the annual report to provide an opportunity for Council input. The final deployment plan would be developed per NMFS' discretion to meet data needs for conservation and management.

NMFS would include information on how industry participants have adapted to the new program in the annual report. The Council could revise the fee assessment percentage or other aspects of the observer regulations through rulemaking after it had an opportunity to evaluate program revenues and costs, observer coverage levels, fishery management objectives, and future sampling and observer deployment plans.

J. Program Review

Beginning five years after implementation of this proposed action, the Council would assess whether the goals and objectives leading to these proposed modifications to the Observer Program have been achieved. Per the Council's motion, implementation is considered the first year of observer deployment under the new program.

K. Start-Up Funding

Start-up funds would need to be available for NMFS to contract with observer providers for observer coverage in the partial coverage category. Funds equal to or greater than the full cost of a contractual task order must be on deposit in the North Pacific Fishery Observer Fund (NPOF) for the task order to be assigned to a contractor. Government-contracted work cannot commence until a task order is assigned. Currently, there are no funds in the NPOF. In the out-years of the modified Observer Program, revenues for contracts for the partial coverage category would be provided through the ex-vessel fee, thus, a one-time action is needed to fund the transition from direct industry contracts with observer providers to government contracts with observer providers. Potential ways to fund the first year of the new deployment system include: Collecting ex-vessel fees from partial coverage category participants for a period of time prior to issuing contracts and deploying observers under the new system; Federal contributions to the NPOF, if available; or a combination of Federal funding and industry fees.

The Council recommended that, in the absence of a Federal contribution for start-up funds for the new system, vessels and processors subject to the 1.25 percent ex-vessel fee assessment under the proposed action would continue to pay for their observer coverage required under the existing regulations at § 679.50. These vessels and processors would pay the difference between their ex-vessel value fee liability under the new system and the actual observer coverage costs they incurred to comply with existing observer coverage requirements at § 679.50. It was noted in section 3.3 of the analysis (see **ADDRESSES**) that one to three years after publication of the final rule may be required to collect sufficient revenue to deploy observers under the new funding and deployment system using this approach. The Council's motion noted that, if available, Federal funding would be used towards the initial deployment of observers under the new deployment system and would offset the amount of fees collected from industry to transition to the new deployment system.

NMFS proposes to use Federal funds to pay for the first year of observer coverage for the partial coverage category and anticipates that funds will be available for this purpose. Federal funding would assist the transition of one industry-funded Observer Program to an alternate industry-funded Observer Program and accelerate the ability for NMFS to address longstanding concerns with data quality and cost equity in operations that are observed at a rate of less than 100 percent. This approach would also preclude the need for NMFS to calculate and collect the difference of an operation's observer costs under the status quo system and the associated rulemaking for that one-time event. This proposed rule does not include the additional regulations that would be needed to collect start-up funds from industry and to specify how vessels and processors would pay the difference between their ex-vessel value fee liability under the new system and the actual observer coverage costs they incurred to comply with existing observer coverage requirements in the transition year or years.

L. Other Revisions

Because the proposed rule retains the existing funding and deployment system for the full observer coverage category, many of the existing regulations in subpart E to 50 CFR 679 (subpart E) would not be modified by this proposed rule. However, revisions and additions under this proposed rule would result in the renumbering of all sections at Subpart E. As such, subpart E as it would be revised by this proposed rule is presented in its entirety in the regulatory text section. However, NMFS does not propose to amend regulations that are not within the scope of this proposed rule, which are the sections where the regulatory text is unchanged from the existing regulations in subpart E. Regulations that are substantively unchanged by this proposed rule include responsibilities for vessels and shoreside and stationary floating processors required to carry an observer or maintain observer coverage and provisions for release of observer data to the public. The following sections would only be modified to make them specific to operations in the full coverage category: ''Procurement of observer services,'' ''observer provider permitting and responsibilities,'' and ''observer certification and responsibilities.''

M. Public Comment Topics

NMFS invites public comment on all aspects of this proposed rule to implement Amendments 86 and 76 to the FMPs. Under this proposed rule, catcher/processors not meeting the limited exceptions to opt in to the partial coverage category would be in the full coverage category. Catcher/processors using jig gear would be included in the full coverage category while catcher vessels using jig gear would not be required to carry an observer in the initial year(s) of the new program, and NMFS specifically requests the public to comment on this aspect of the proposed rule.

III. Classification

Pursuant to sections 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the MSA, and other applicable law, subject to further consideration of comments received during the public comment period.

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

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSES**). Amendments 86 and 76 were chosen based on those measures that maximized net benefits to

the affected participants in the BSAI and GOA groundfish and halibut fisheries. Specific aspects of the RIR are discussed below in the initial regulatory flexibility analysis (IRFA) section.

Initial Regulatory Flexibility Analysis (IRFA)

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained at the beginning of this section and in the **SUMMARY** section of the preamble and not repeated here. A summary of the analysis follows. A copy of the complete analysis is available from NMFS (see **ADDRESSES**).

The Small Business Act has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business ''involved in fish harvesting'' is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations, worldwide.

Number and Description of Small Entities Regulated by the Proposed Action

The proposed action would directly regulate entities that harvest or process groundfish and halibut in Federal waters of the BSAI and GOA and vessels holding an FFP and harvesting groundfish in State waters that are accounted for under a Federal TAC. This specifically includes landings of (1) groundfish in the parallel fisheries in State waters, (2) groundfish incidental to harvest in the State waters fisheries (Pacific cod, pollock, sablefish), and (3) groundfish incidental to harvest in the halibut or sablefish IFQ in State waters. Organizations to which direct allocations of groundfish are made would also be regulated by the proposed action. In the BSAI, this includes the six CDQ groups, the AFA fishing sectors (i.e., at-sea, inshore), and the catcher/processor sector under BSAI FMP Amendment 80. Refer to the RIR for descriptions of each fishing sector by area, gear type, and program (see **ADDRESSES**).

A total of 1,775 entities (including catcher vessels, catcher/processors, motherships, shoreside processors, stationary floating processors, and CDQ groups) are estimated to be directly regulated by the proposed action. Of the directly regulated entities, 80 are estimated to be large. The table below summarizes all of the potentially directly regulated small entities, by sector, under the proposed action. The IRFA likely overestimates the number of directly regulated small entities. NMFS does not have access to data on ownership and other forms of affiliation for most segments of the fishing industry operating off Alaska, nor does NMFS have information on the combined annual gross receipts for each entity by size. Absent these data, a more precise characterization of the size composition of the directly regulated entities impacted by this action cannot be offered.

TABLE 8—ESTIMATED NUMBER OF SMALL ENTITIES POTENTIALLY DIRECTLY REGULATED BY THE PROPOSED ACTION BASED ON 2008 LANDINGS DATA. THE TOTAL NUMBER OF ENTITIES IS ADDITIVE SUCH THAT A VESSEL OR PROCESSOR CANNOT APPEAR IN MORE THAN ONE CATEGORY

Sector	Number of small entities
Halibut & sablefish IFQ [1]	1,411
Groundfish catcher vessels [2]	125
Groundfish catcher/processors [2]	6
Motherships [3]	1
Shoreside processors & stationary floating processors	~146
CDQ groups	6

[1] Includes any vessel that fished halibut IFQ, sablefish IFQ, or halibut CDQ. An estimated 761 of these vessels also fished groundfish.

[2] Groundfish catcher vessel and catcher/processor data represent an estimate of the number of vessels that fished groundfish and did not fish halibut or sablefish IFQ.

[3] Catcher/processors that acted as a catcher/processor and a mothership during 2008 are included in the catcher/processor category. The mothership category includes vessels that only operated as a mothership in 2008.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

Description of Significant Alternatives to the Proposed Action That Minimize Adverse Impacts on Small Entities

The Council considered five alternatives for this action, one no-action and four action alternatives, and two options that could apply to the action alternatives. All of the action alternatives included assessing a fee and deploying observers on halibut vessels and vessels less than 60 ft. LOA in the GOA and the BSAI, which are likely the smallest of the small entities affected by this proposed rule. Impacts of this proposed rule on small entities are described in section 5 of the analysis (see **ADDRESSES**). During deliberations on the preferred alternative, the Council was mutually concerned with minimizing impacts to small entities, providing equity within the program, and increasing data quality, by including small vessels and halibut vessels in the Observer Program for the first time. While significant alternatives to the proposed action meeting these RFA criteria have not been identified, several provisions included in the proposed action were included with the expectation that they may reduce economic impacts on small entities.

The proposed observer deployment among vessels in the partial coverage category differs for the smallest vessels. In the initial year(s) of the restructured program, NMFS proposes that catcher vessels using jig gear and catcher vessels less than 40 ft. LOA using pot or hook-and-line gear would not be selected to carry an observer. Catcher vessels greater than or equal to 40 ft. LOA but less than 57.5 ft. LOA using pot or hook-and-line gear would be subject to a vessel selection pool, in which they could be randomly selected to carry an observer for a specified period of time. Vessels in the ''no selection'' and vessel selection pools would be required to pay the ex-vessel value observer fee for landings subject to the new program, though they would not incur other direct or indirect costs of carrying an observer to the same extent as operators of vessels with higher selection probabilities.

At its June 2010 meeting, upon hearing public testimony about the limited ability for some smaller vessels to carry an observer, and recognizing that the proposed action provides a funding mechanism for electronic monitoring, the Council approved a motion for NMFS to make electronic monitoring available as an alternative tool for fulfilling observer coverage requirements. The electronic monitoring option would not change the funding mechanism or fee amount proposed in

this action, but could serve to reduce economic impacts on small entities by providing an alternative to carrying a human observer.

The Council included a provision for some flexibility for small catcher/processors that would be included in the new funding and deployment system. Under the Council's preferred alternative, all catcher/processors would be placed in the full coverage category and operate under the status quo system funding and deployment system. Thus, groundfish and halibut catcher/processors less than 60 ft. LOA that have not been subject to observer coverage requirements would now be required to have 100 percent coverage under direct contracts with observer providers. To minimize impacts on these entities, the Council included the provision for catcher/processor vessels less than 60 ft. LOA with a history of both catcher/processor and catcher vessel activity in a single year or any catcher/processor vessel with an average daily production of less than 5,000 pounds in the most recent full calendar year of operation prior to January 1, 2010, to make a one-time election as to whether they will be in the partial observer coverage category with the ex-vessel revenue fee structure or the full observer coverage category with the status quo funding system.

The Council considered, but did not adopt Option 1, which would establish an ex-vessel value fee equal to half of that selected under the preferred alternative to be assessed on all halibut IFQ landings and on groundfish landings from vessels less than 40 ft., less than 50 ft., or less than 60 ft. LOA. An estimated 61 groundfish catcher vessels less than 60 ft. LOA and almost the entire IFQ fleet (greater than 1,400 vessels) would have been assessed a reduced fee under Option 1, based on 2008 data. However, upon deliberations, and premised on the concept that all sectors benefit from the resulting data, the Council chose to apply the same fee percentage to all sectors in the partial observer coverage category, to develop a fair and equitable fee program across all sectors subject to the new funding and deployment system. Because the Council selected a 1.25 percent ex-vessel fee for all vessels and processors subject to the new funding and deployment system, all small entities, regardless of the sector in which they participate or vessel size, will benefit from a reduced fee relative to the maximum 2 percent fee that was under consideration.

With the exception of the provisions discussed above, there do not appear to be significant alternatives to the proposed action that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize the economic impact of the proposed rule on small entities. The Council recognized that costs of observer coverage could be minimized or eliminated for small entities (indeed, entities of all sizes) through a Federal subsidy program for observer coverage in the North Pacific, similar to federally funded observer subsidy programs in other regions of the United States. However, because the Council cannot appropriate Federal funds, or lobby Congress for additional funds, an alternative for full Federal taxpayer funding of observer coverage in the North Pacific was not included by the Council.

Recordkeeping and Reporting Requirements

If a new FFP is issued after December 1 of the year prior to the upcoming fishing year, owners of vessels in the partial observer coverage category would be required to enter their vessel information into the Deployment System within 30 days of the FFP issuance date. A vessel owner or operator intending to land halibut IFQ or CDQ or sablefish IFQ would be required to enter their vessel information into the Deployment System at least 30 days prior to embarking on his or her first halibut or sablefish IFQ trip of the fishing year if the vessel did not land halibut IFQ or CDQ or sablefish IFQ in the preceding year. Operators of vessels subject to the trip selection pool in the partial observer coverage category per this proposed rule would be required to hail-in to the Deployment System at least 72 hours prior to embarking on a fishing trip to fish for halibut or directed fish for groundfish. Operators of vessels in the vessel selection pool would be required to coordinate with NMFS' observer contractors per instructions provided by the Deployment System to arrange for observer coverage when the vessel is selected for coverage. No new reporting requirements are proposed for operators of vessels in the full observer coverage category or operators of shoreside processors and stationary floating processors to obtain required observer coverage.

Landings information submitted by managers of shoreside processors and stationary floating processors under regulations current at the time, would be used to assess the observer fee liability for each landing. Managers of shoreside processors and stationary floating processors would access reports generated by NMFS' web-based application for a statement of the observer fee liability associated with each landing.

Proposed changes to § 679.5 would add a reporting requirement to IFQ Registered Buyers. Registered buyers who purchase CDQ halibut would be required to report annually, the monthly total weight of CDQ halibut landed and purchased by the Registered Buyer, the monthly total price paid for CDQ halibut purchased by the Registered Buyer, and the monthly total amount paid for any retro-payments of CDQ halibut. Existing recordkeeping and reporting requirements for IFQ Registered Buyers would also continue to apply.

This proposed rule would also modify the information requirements listed at § 679.5(l)(7)(i) such that, instead of listing all of the Registered Buyer identification data fields at § 679.5(l)(7)(i)(C)(1), the regulations would refer to the information instructed on the report form. In this manner, a regulatory amendment would not be required to change the data fields on the report form if a new field is added, or a superfluous field removed at a future date. The regulations would also be revised to instruct a Registered Buyer to submit his or her completed report to the address provided on the report form. The mailing address at § 679.5(l)(7)(i)(D) would be removed to allow for current address information to be provided on the form, rather than in regulations, to prevent the need for a regulatory amendment, should the address change in the future.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden is provided below by OMB collection number.

OMB Control No. 0648–0206

Public reporting burden per response is estimated to average 21 minutes for Federal Processor Permit application; and 21 minutes for Federal Fisheries Permit application.

OMB Control No. 0648–0272

Public reporting burden per response is estimated to average 30 minutes for Registered Buyer Permit application.

OMB Control No. 0648–0318

Public reporting burden per response is estimated to average 30 minutes for Observer Fee and receipt of the observer

fee liability generated with each landing; 2 hours for registration with the Alaska Observer Deployment System; 4 hours for appeals; 60 hours for Application for an observer provider permit; 30 minutes for Industry request for assistance in improving observer data quality issues; 60 hours for Application for an observer provider permit;15 minutes for Update to provider information; 15 minutes for Observer candidates' college transcripts and disclosure statements, observer candidate; 15 minutes for Observer candidates' college transcripts and disclosure statements, observer provider; 5 minutes for Notification of observer physical examination, Observer Providers; 7 minutes for Projected observer assignments; 7 minutes for Observer briefing registration; 40 hours for Observer Conduct and Behavior policy; 15 minutes for Copies of contracts; 30 minutes for Copies of invoices; 7 minutes for Observer deployment/logistics reports; 7 minutes for Observer debriefing registration; 12 minutes for Certificate of insurance; 2 hours for Other reports (of problems).

OMB Control No. 0648–0398

Public reporting burden per response is estimated to average 2 hours for Registered Buyer Ex-vessel Value and Volume Report (Buyer Report).

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

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov,* or fax to 202 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 9, 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 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

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

2. In § 679.1, revise paragraph (f) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(f) *Groundfish and Halibut Observer Program.* Regulations in this part govern elements of the Groundfish and Halibut Observer Program.

* * * * *

3. In § 679.2,

a. Remove the definitions for ''Fishing day'' and ''Legal proceedings'';

b. Revise the definitions for ''Catcher/processor (C/P)'', ''Decertification'', ''Fishing Trip'', ''Mothership'', and ''Observer''; and

c. Add a definition for ''Parallel groundfish fishery'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Catcher/processor (C/P) means, with respect to groundfish recordkeeping and reporting and subpart E of this part, a vessel that is used for catching fish and processing that fish.

* * * * *

Decertification, as used in § 679.53(c), means action taken by a decertifying official under § 679.53(c)(3) to revoke certification of an observer or observer provider. An observer or observer provider whose certification is so revoked is decertified.

* * * * *

Fishing Trip means: * * *

* * * * *

(3) *Groundfish and Halibut Observer Program.* With respect to subpart E of this part, the period of time that begins when a catcher vessel departs a port to harvest fish until the offload or transfer of all fish from that vessel.

* * * * *

Mothership means a vessel that receives and processes groundfish from other vessels.

* * * * *

Observer means any

(1) Individual employed by a permitted observer provider or a NMFS observer contractor for the purpose of serving in the capacity of an observer aboard vessels and at shoreside processors or stationary floating processors under this part; or

(2) NMFS employee deployed at the direction of the Regional Administrator or individual authorized by NMFS, aboard a vessel or at a shoreside processor or stationary floating processor for the purpose of serving in the capacity of an observer as required for vessels, shoreside processors, or stationary floating processors under § 679.51(a) or (b), or for other purposes of conservation and management of marine resources as specified by the Regional Administrator.

* * * * *

Parallel groundfish fishery. With respect to subpart E of this part, parallel groundfish fishery means a fishery that occurs in waters of the State of Alaska (from 0 to 3 nm) adjacent to the BSAI or GOA management areas and open concurrently with Federal groundfish fisheries such that groundfish catch is deducted from the Federal Total Allowable Catch.

* * * * *

4. In § 679.4,

a. Redesignate paragraphs (d)(3)(iv) and (d)(3)(v) as paragraphs (d)(3)(v) and (d)(3)(vi), respectively, and paragraph (f)(2)(v) as (f)(2)(vi);

b. Revise paragraph (d)(3)(iii) and newly redesignated (d)(3)(v); and

c. Add paragraphs (d)(3)(iv) and (f)(2)(v) to read as follows:

§ 679.4 Permits.

* * * * *

(d) * * *

(3) * * *

(iii) A Registered Buyer permit is issued on an annual cycle defined as March 1 through then end of February of the next calendar year, to persons that have a Registered Buyer application approved by the Regional Administrator.

(iv) For the Registered Buyer application to be considered complete, all fees due to NMFS under § 679.55 at the time of application must be paid.

(v) A Registered Buyer permit is in effect from the first day of March in the year for which it is issued or from the date of issuance, whichever is later, through the end of the current annual cycle, unless it is revoked, suspended,

surrendered in accordance with paragraph (a)(9) of this section, or modified under § 600.735 or § 600.740 of this chapter.

* * * * *

(f) * * * (1) *Requirement.* No shoreside processor of the United States, stationary floating processor, or CQE floating processor described at (f)(2) of this section may receive or process groundfish harvested in the GOA or BSAI unless the owner obtains a Federal processor permit (FPP) issued under this part. An FPP is issued without charge.

(2) *FPP application.* To obtain, amend, or renew an FPP, the owner must complete an FPP application per the instructions at *http://alaskafisheries.noaa.gov/ram.*

(i) For the FPP application to be considered complete, all fees due to NMFS under § 679.55 at the time of application must be paid.

(ii) *Signature.* The owner or authorized representative of the owner of the shoreside processor, stationary floating processor, or CQE floating processor must sign and date the application, certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, proof of authorization must accompany the application.

* * * * *

5. In § 679.5, revise paragraph (l)(7)(i) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(l) * * *

(7) * * *

(i) *IFQ Registered Buyer Ex-vessel Volume and Value Report (IFQ Buyer Report)*

(A) *Applicability.* An IFQ Registered Buyer that operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut or CDQ landings of halibut must submit annually to NMFS a complete IFQ Buyer Report as described in this paragraph (l) and as provided by NMFS for each reporting period, as described at § 679.5(1)(7)(i)(E), in which the Registered Buyer receives IFQ fish or CDQ halibut.

(B) *Due date.* A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator not later than October 15 following the reporting period in which the IFQ Registered Buyer receives the IFQ fish or CDQ halibut.

(C) *Information required.* A complete IFQ Buyer Report must include the following information as instructed on the report form at *http://alaskafisheries.noaa.gov/ram:*

(*1*) *IFQ Registered Buyer identification.*

(*2*) *Pounds purchased and values paid.* (*i*) The monthly total weights, represented in IFQ equivalent pounds by IFQ species or CDQ halibut, that were landed at the landing port location and purchased by the IFQ Registered Buyer;

(*ii*) The monthly total gross ex-vessel value, in U.S. dollars, of IFQ pounds, by IFQ species or CDQ halibut, that were landed at the landing port location and purchased by the IFQ Registered Buyer;

(*3*) *Value paid for price adjustments* — (*i*) *Retro-payments.* The monthly total U.S. dollar amount of any retro-payments (correlated by IFQ species or CDQ halibut, landing month(s), and month of payment) made in the current year to IFQ, or to CDQ halibut permit holders for landings made during the previous calendar year;

(*ii*) *Electronic submittal.* Certification, including the NMFS ID and password of the IFQ Registered Buyer; or

(*iii*) *Non-electronic submittal.* Certification, including the printed name and signature of the individual submitting the IFQ Buyer Report on behalf of the Registered Buyer, and date of signature.

(D) *Submittal.* If applicable, the Registered Buyer must complete an IFQ Buyer Report and submit by mail or FAX to NMFS at the address provided on the form, or electronically to NMFS online at *http://alaskafisheries.noaa.gov/ram.*

* * * * *

6. In § 679.7,

a. Redesignate paragraph (g)(7) as (g)(9);

b. Revise paragraph (a)(3) and paragraph (g) heading; and

c. Add paragraphs (g)(7) and (g)(8) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(2) * * *

(3) *Groundfish and Halibut Observer Program.* (i) Fish or process groundfish except in compliance with the terms of the Groundfish and Halibut Observer Program as provided by subpart E of this part.

(ii) Except where observer services are provided by a NMFS employee or other individuals authorized by NMFS under § 679.51(c) or § 679.51(d)(1)(ii), deploy observers in the full observer coverage category at § 679.51(a)(2) and (b)(2) without an observer provider permit issued under § 679.52(a).

* * * * *

(g) *Groundfish and Halibut Observer Program.*

* * * * *

(7) Embark on a fishing trip to directed fish for groundfish or to fish for halibut with hook-and-line gear without registering with the Observer Declaration and Deployment System per requirements at § 679.51(a)(1)(ii).

(8) Embark on a fishing trip to directed fish for groundfish or to fish for halibut with hook-and-line gear without carrying an observer if the fishing trip is selected for observer coverage per § 679.51(a)(1)(ii)(D)(*2*), or the vessel is selected for observer coverage per § 679.51(a)(1)(ii)(E).

* * * * *

7. In § 679.32,

a. Remove paragraphs (c)(1) introductory text, (c)(3)(i)(A) introductory text, and (c)(3)(ii)(A);

b. Redesignate paragraphs according to the following table;

Redesignate paragraph(s)	As paragraph(s)
(c)(1)(i)	(c)(1)(ii)(A).
(c)(1)(ii)	(c)(1)(ii)(B).
(c)(3)(i)(B) through (c)(3)(i)(F)	(c)(3)(i)(A) through (c)(3)(i)(E), respectively.
(c)(3)(ii)(B) through (c)(3)(ii)(G)	(c)(3)(ii)(A) through (c)(3)(ii)(F), respectively.

c. Revise newly redesignated paragraphs (c)(3)(i)(A) heading, (c)(3)(i)(A)(*1*), (c)(3)(i)(B)(*1*), (c)(3)(i)(C)(*1*), (c)(3)(i)(D), (c)(3)(i)(E)(*1*);

d. Revise paragraphs (c)(2)(i)(A), (d)(2)(i), and (e)(3)(i)(A); and

e. Add paragraphs (c)(1)(i), (c)(1)(ii) heading and introductory text, and (d)(1)(iii) to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * * (1) *Sablefish CDQ fishing with fixed gear.* (i) *Observer Coverage.*

Operators and owners of catcher vessels sablefish CDQ fishing must comply with observer coverage requirements at § 679.51(a)(1). Operators and owners of catcher/processors sablefish CDQ fishing must comply with observer coverage requirements at § 679.51(a)(2).

(ii) *Data sources used for CDQ catch accounting.* NMFS will use the following data sources to account for catch made by vessels sablefish CDQ fishing with fixed gear:

(2) * * *

(i) * * *

(A) Comply with observer coverage requirements at § 679.51(a)(2).

* * * * *

(3) * * *

(i) * * *

(A) *Catcher vessels using trawl gear and delivering sorted catch to a processor.* * * *

(*1*) Comply with the observer coverage requirements at § 679.51(a)(2).

* * * * *

(B) * * *

(*1*) Comply with the observer coverage requirements at § 679.51(a)(2).

* * * * *

(C) * * *

(*1*) Comply with the observer coverage requirements at § 679.51(a)(2).

* * * * *

(D) *Observed catcher vessels using nontrawl gear.* Operators of vessels in this category must retain all CDQ species until they are delivered to a processor that meets the requirements of paragraph (d) of this section unless retention of groundfish CDQ species is not authorized under § 679.4 of this part, discard of the groundfish CDQ or PSQ species is required under subpart B of this part, or, in waters within the State of Alaska, discard is required by laws of the State of Alaska. All of the halibut PSQ must be counted and sampled for length or weight by the observer.

(E) * * *

(*1*) Each CDQ set on a vessel using nontrawl gear must be sampled by an observer for species composition and weight.

* * * * *

(d) * * * (1) * * *

(iii) Comply with observer coverage requirements at § 679.51(b)(2) of this part.

(2) * * *

(i) Comply with observer coverage requirements at § 679.51(b)(1) of this part.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(A) *Application form.* The application to use alternative CDQ harvest regulations is available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* * * *

* * * * *

8. Under part 679, revise subpart E heading to read as follows:

Subpart E—Groundfish and Halibut Observer Program

9. In § 679.50,

a. Remove and reserve paragraph (b) and remove paragraphs (c) through (i); and

b. Revise section heading and paragraph (a) to read as follows:

§ 679.50 Applicability.

(a) *General.* (1) The operator of a vessel designated or required to be designated on a Federal fisheries permit (FFP) under § 679.4(b); the operator of a processor designated or required to be designated on a Federal processor permit (FPP) under § 679.4(f)(1) or a Registered Buyer permit under § 679.4(d)(3); and the operator of a vessel used to harvest IFQ halibut, CDQ halibut, or IFQ sablefish must comply with this subpart. The owner of a vessel or a shoreside processor must ensure that the operator or manager complies with this subpart.

(2) *Exceptions.* A catcher vessel that delivers only unsorted codends to a mothership is not subject to the requirements of this subpart.

(3) For purposes of this subpart, halibut means CDQ and IFQ halibut.

10. A new § 679.51 is added to read as follows:

§ 679.51 Observer requirements for vessels and plants.

The following table provides a reference to the paragraphs in this section that contain observer coverage requirements for vessels, shoreside processors, and stationary floating processors participating in certain fishery programs.

Program	Catcher/processors	Catcher vessels	Motherships	Shoreside and stationary floating processors
Groundfish CDQ—Nontrawl Gear	(a)(2)(vi)(A)(*3*) through (*4*)	(a)(2)(i)(C) hook-and-line; (a)(1)(i) pot.	(a)(2)(vi)(A)(*5*)	(b)(1)
Groundfish CDQ—Trawl Gear	(a)(2)(vi)(A)(*1*)	(a)(2)(i)(C)	(a)(2)(vi)(A)(*5*)	(b)(1)
Halibut—CDQ and IFQ	(a)(2)(i)(A)	(a)(1)(i)(A) and (B)	(a)(2)(i)(B)	(b)(1)
Sablefish—CDQ and IFQ	(a)(2)(i)(A)	(a)(1)(i)(A) and (B)	(a)(2)(i)(B)	(b)(1)
BS pollock—AFA and CDQ	(a)(2)(vi)(B)(*1*) and (*2*)	(a)(2)(i)(C)	(a)(2)(vi)(B)(*1*) and (*2*)	(b)(2)
Aleutian Islands pollock	(a)(2)(vi)(B)(*3*) through (*4*)	(a)(1)(i)(A)	(a)(2)(vi)(B)(*4*)	(b)(1)
Rockfish Program	(a)(2)(vi)(D)	(a)(2)(i)(C)	N/A	(b)(1)
Amendment 80 vessels and Non-AFA trawl catcher/processors fishing in the BSAI.	(a)(2)(vi)(C)	N/A	N/A	N/A
Vessels and processors participating in all other BSAI and GOA groundfish fisheries.	(a)(2)(i) and (vi)	(a)(1)(i)(A) and (B)	(a)(2)(i)(B)	(b)(1)

(a) *Observer requirements for vessels*—(1) *Groundfish and halibut fishery partial observer coverage category*—(i) *Vessel classes in partial coverage category.* Unless otherwise specified in paragraph (a)(2) of this section, the following catcher vessels are in the partial observer coverage category when fishing for halibut with hook-and-line gear or when directed fishing for groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

(A) A catcher vessel designated on an FFP under § 679.4(b)(1); or

(B) A catcher vessel when fishing for halibut with hook-and-line gear and while carrying a person named on a permit issued under § 679.4(d)(1)(i), § 679.4(d)(2)(i), or § 679.4(e)(2), or for sablefish IFQ with hook-and-line or pot gear and while carrying a person named on a permit issued under § 679.4(d)(1)(i) or § 679.4(d)(2)(i).

(ii) *Registration and notification of observer deployment.* The Observer Declaration and Deployment System (Deployment System) is the communication platform for the partial observer coverage category by which

NMFS receives information about fishing plans subject to randomized observer deployment. Vessel operators provide fishing plan and contact information to NMFS and receive instructions through the Deployment System for coordinating with an observer contractor for any required observer coverage. Access to the Deployment System is available through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

(A) NMFS will automatically enter into the Deployment System for the following year all partial coverage category vessels that are designated on an FFP and all catcher vessels that are not designated on an FFP but that landed sablefish IFQ or halibut IFQ or CDQ in the current year. NMFS will notify in writing, owners of vessels automatically entered into the Deployment System. The written notification will indicate the applicable selection pool.

(B) If an FFP is issued after December 1 of the year preceding the fishing year and the vessel is in the partial observer coverage category per paragraph (a)(1)(i)(A) of this section, the vessel owner must enter the vessel information into the Deployment System within thirty days of the FFP date of issuance.

(C) The operator of a vessel in the partial observer coverage category per paragraph (a)(1)(i)(B) of this section must enter the vessel information into the Deployment System at least thirty days prior to embarking on his or her first fishing trip of the year for halibut or sablefish IFQ if the vessel did not land halibut or sablefish IFQ in the preceding year.

(D) Upon entry into the Deployment System per paragraph (a)(1)(ii)(B) or (C) of this section, the Deployment System will notify the owner or operator as to whether his or her vessel is entered in either a ''vessel'' or ''trip'' selection pool. Owners and operators must comply with all further instructions set forth by the Deployment System.

(E) *Trip Selection Pool.* (*1*) A minimum of 72 hours prior to embarking on each fishing trip, the operator of a vessel in the trip selection pool must register the anticipated trip with the Deployment System.

(*2*) When a fishing trip is registered with the Deployment System per paragraph (a)(1)(ii)(E)(*1*) of this section, the vessel operator will be notified by the Deployment System whether the trip is selected for observer coverage and a receipt number corresponding to this notification will be provided by the Deployment System. Trip registration is complete when the vessel operator receives a receipt number.

(*3*) An operator may embark on a fishing trip registered with the Deployment System:

(*i*) *Not selected trip.* At any time if the Deployment System indicates that the fishing trip is not selected for observer coverage.

(*ii*) *Selected trip.* When an observer is aboard the vessel if the Deployment System indicates that the fishing trip is selected for observer coverage.

(*4*) *Delayed trip.* A selected fishing trip not embarked upon within 48 hours of the time specified in the registration with the Deployment System is invalidated. The operator must register any new trip in accordance with paragraph (a)(1)(ii)(E)(*1*) of this section.

(*5*) *Observer Coverage Duration.* If selected, a vessel is required to carry an observer for the entire fishing trip.

(*i*) A fishing trip selected for observer coverage may not begin until all previously harvested fish has been offloaded and an observer is aboard the vessel.

(*ii*) An observer may not be transferred off a catcher vessel until the observer confirms that all fish from the observed fishing trip are offloaded.

(F) *Vessel Selection Pool.* (*1*) A vessel selected for observer coverage is required to have an observer onboard for all groundfish and halibut fishing trips specified at paragraph (a)(1)(i) of this section for the time period indicated by the Deployment System.

(*2*) At its discretion, NMFS may provide electronic monitoring equipment to a vessel owner or operator to use on a vessel. A vessel owner or operator must coordinate with NMFS to make the vessel available for evaluation and installation of electronic monitoring equipment if NMFS determines that electronic monitoring is appropriate.

(iii) The Observer Program may release a selected trip per paragraph (a)(1)(ii)(E) of this section or a selected vessel per paragraph (a)(1)(ii)(F)(*1*) of this section, from observer coverage on a case-by-case basis.

(2) *Groundfish and halibut fishery full observer coverage category*—(i) *Vessel classes in the full coverage category.* The following classes of vessels are in the full observer coverage category when harvesting halibut or when harvesting, receiving, or processing groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

(A) Catcher/processors;

(B) Motherships; and

(C) Catcher vessels while:

(*1*) Directed fishing for pollock in the BS;

(*2*) Using trawl gear or hook-and-line gear while groundfish CDQ fishing (see § 679.2); or

(*3*) Participating in the Rockfish Program.

(ii) *Observer coverage requirements.* Unless subject to the partial observer coverage category per paragraph (a)(1)(i) of this section, a vessel listed in paragraphs (a)(2)(i)(A) through (C) of this section must have at least one observer aboard the vessel at all times. Some fisheries require additional observer coverage in accordance with paragraph (a)(2)(vi) of this section.

(iii) *Observer workload.* The time required for an observer to complete sampling, data recording, and data communication duties per paragraph (a)(2) of this section may not exceed 12 consecutive hours in each 24-hour period.

(iv) *Catcher/processor classification.* (A) For purposes of this subpart, a vessel is classified as a catcher/processor according to the operation designation on its FFP. A vessel designated as a catcher/processor at any time during the calendar year is classified as a catcher/processor for the remainder of the calendar year.

(B) An owner or operator of a catcher/processor that processes no more than one metric ton round weight of groundfish on any day, may register with the Deployment System in accordance with paragraph (a)(1)(ii) of this section to be included in the partial observer coverage category in lieu of the full coverage category for the following calendar year.

(v) *One-time election of observer coverage category.* The owner of a vessel less than 60 ft. LOA with a history of catcher/processor and catcher vessel activity in a single year from January 1, 2003, through January 1, 2010; or any catcher/processor with an average daily groundfish production of less than 5,000 pounds round weight equivalent in the most recent full calendar year of operation from January 1, 2003, to January 1, 2010, may make a one-time election as to whether the vessel will be in the partial observer coverage category at (a)(1) of this section, or the full observer coverage category at (a)(2) of this section. The daily groundfish production average is based on the number of days the vessel operated each year from January 1, 2003, through January 1, 2010.

(A) *Notification of election.* The person named on the FFP for a vessel eligible for the one-time election must notify the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802, of their election in writing, at

least thirty days prior to embarking on his or her first fishing trip.

(B) *Default coverage category.* If an owner forgoes the opportunity for a one-time election, the vessel will be assigned to the partial or full observer coverage category per (a)(1)(i) or (a)(2)(i) of this section.

(C) *Effective Duration.* The one-time election is effective for:

(*1*) The duration that both the catcher/processor and catcher vessel designations are listed on the FFP for vessels less than 60 ft. LOA; or

(*2*) The duration the FFP is issued to the person named on the FFP at the time of the election for catcher/processors with an average daily production of less than 5,000 pounds round weight equivalent in the most recent full calendar year of operation from January 1, 2003, through January 1, 2010.

(vi) *Additional observer requirements*—(A) *CDQ fisheries.* The owner or operator of a vessel must comply with the following requirements each day that the vessel is used to catch, process, deliver, or receive CDQ groundfish.

(*1*) *Catcher/processors using trawl gear and directed fishing for pollock CDQ in the BSAI and motherships taking deliveries from catcher vessels directed fishing for pollock CDQ in the BSAI.* See § 679.51(a)(2)(vi)(B)(*2*).

(*2*) *Catcher/processors using trawl gear and groundfish CDQ fishing.* See § 679.51(a)(2)(vi)(C).

(*3*) *Catcher/processors using hook-and-line gear.* A catcher/processor using hook-and-line gear and groundfish CDQ fishing must have at least two level 2 observers aboard, at least one of whom must be a lead level 2 observer, unless the vessel is participating in a voluntary cooperative and exempted from this regulation under § 679.32(e), or NMFS approves an alternative fishing plan under § 679.32(c)(3)(ii)(F) authorizing the vessel to carry only one lead level 2 observer. See § 679.53(a)(5)(v) for endorsement requirements for lead level 2 observers.

(*4*) *Catcher/processors using pot gear for groundfish CDQ fishing.* A catcher/processor using pot gear must have at least one lead level 2 observer aboard the vessel. More than one observer must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(*5*) *Motherships.* A mothership that receives unsorted codends from catcher vessels groundfish CDQ fishing must have at least two level 2 observers aboard the mothership, at least one of whom must be certified as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(B) *BSAI pollock fisheries*—(*1*) *Listed AFA catcher/processors and AFA motherships.* The owner or operator of a listed AFA catcher/processor or AFA mothership must have aboard at least two observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest, process, or receive groundfish. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(*2*) *Pollock CDQ catcher/processors and motherships.* The owner or operator of a catcher/processor or mothership used to catch, process, or receive pollock CDQ must comply with the observer coverage requirements in paragraph (a)(2)(vi)(B)(*1*) of this section for each day that the vessel is used to catch, process, or receive pollock CDQ.

(*3*) *Unlisted AFA catcher/processors.* The owner or operator of an unlisted AFA catcher/processor must have aboard at least two observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or receive pollock harvested in the BSAI. At least one observer must be certified as a lead level 2 observer. When an unlisted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving pollock harvested in the BSAI, the observer coverage requirements at paragraph (a)(2)(ii) of this section apply.

(*4*) *AI directed pollock fishery catcher/processors and motherships.* A catcher/processor participating in the AI directed pollock fishery or a mothership processing pollock harvested in the AI directed pollock fishery must have aboard at least two observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to catch, process, or receive groundfish. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(C) *Amendment 80 vessels and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI.* All Amendment 80 vessels using any gear but dredge gear while directed fishing for scallops and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI must have aboard at least two observers for each day that the vessel is used to catch, process, or receive groundfish harvested in a federally managed or parallel groundfish fishery. More than two observers are required if the observer workload restriction would otherwise preclude sampling as required.

(D) *Catcher/processors participating in the Rockfish Program*—(*1*) *Rockfish cooperative.* A catcher/processor vessel that is named on an LLP license that is assigned to a rockfish cooperative and is fishing under a CQ permit must have at least two observers aboard for each day that the vessel is used to catch or process fish in the Central GOA from May 1 through the earlier of November 15 or the effective date and time of an approved rockfish cooperative termination of fishing declaration. More than two observers must be aboard if the observer workload restriction at paragraph (a)(2)(iii) of this section would otherwise preclude sampling as required.

(*2*) *Rockfish sideboard fishery for catcher/processors in a rockfish cooperative.* A catcher/processor that is subject to a sideboard limit as described under § 679.82(e) must have at least two observers aboard for each day that the vessel is used to harvest or process fish in the West Yakutat District, Central GOA, or Western GOA management areas from July 1 through July 31. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(b) *Observer requirements for shoreside processors and stationary floating processors*—(1) *Shoreside processor and stationary floating processor partial observer coverage category.* (i) Unless otherwise specified in paragraph (b)(2) of this section, a shoreside processor or a stationary floating processor designated or required to be designated on an FPP under § 679.4(f)(1) is in the partial observer coverage category when receiving or processing groundfish harvested in federally managed or parallel groundfish fisheries, as defined at § 679.2.

(ii) *Coverage.* The manager of a shoreside processor or stationary floating processor must provide observers access to unsorted and sorted catch any time an observer is present at the facility.

(2) *Shoreside processor and stationary floating processor full observer coverage category.* An AFA inshore processor is in the full observer coverage category.

(i) *Coverage level.* An AFA inshore processor must provide an observer for each 12 consecutive-hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BS. An AFA inshore processor that, for more than 12 consecutive hours in

a calendar day, takes delivery of or processes pollock harvested in the BS directed pollock fishery must provide two observers for each such day.

(ii) *Multiple processors.* An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BS directed pollock fishery.

(iii) *Observers transferring between vessels and processors.* An observer transferring from an AFA catcher vessel to an AFA inshore processor may not be assigned to cover the AFA inshore processor until at least 12 hours after offload and sampling of the catcher vessel's delivery is completed.

(c) *NMFS employee observers.* (1) Any vessel, shoreside processor, or stationary floating processor required to comply with observer coverage requirements under paragraphs (a) or (b) of this section or under § 679.7(f)(4) must use, upon written notification by the Regional Administrator, a NMFS employee to satisfy observer coverage requirements as specified in paragraphs (a) and (b) of this section or for other conservation and management purposes as specified by the Regional Administrator.

(2) Prior to deployment of a NMFS employee, the agency will provide written notification to the owner or operator of a vessel, shoreside processor, or stationary floating processor whether observer coverage credit will be granted for that deployment.

(3) Vessel, shoreside processor, and stationary floating processor owners and operators, as well as observers and observer providers, may contact NMFS in writing to request assistance in improving observer data quality and resolving observer sampling issues. Requests may be submitted to: NMFS Observer Program Office, 7600 Sand Point Way NE., Seattle, WA 98115–0070 or transmitted by facsimile to 206–526–4066.

(d) *Procurement of observer services*—(1) *Full coverage category.* (i) The owner of a vessel, shoreside processor, or stationary floating processor required to have full observer coverage under paragraphs (a)(2) and (b)(2) of this section must arrange and pay for observer services from a permitted observer provider.

(ii) The owner of a vessel, shoreside processor, or stationary floating processor is required to arrange and pay for observer services directly from NMFS when the agency has determined and notified them under paragraph (c) of this section that the vessel, shoreside processor, or stationary floating processor shall use a NMFS employee or individual authorized by NMFS in lieu of, or in addition to, an observer provided through a permitted observer provider to satisfy requirements under paragraphs (a)(2) and (b)(2) of this section or for other conservation and management purposes.

(2) *Partial coverage category.* The owner of a vessel in the partial observer coverage category per paragraph (a)(1) of this section must comply with instructions provided by the Deployment System to procure observer coverage for the required duration.

(e) *Responsibilities*—(1) *Vessel responsibilities.* An operator of a vessel required to carry one or more observers must:

(i) *Accommodations and food.* Provide, at no cost to observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses, or other management level personnel of the vessel.

(ii) *Safe conditions.* (A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(B) Have on board:

(*1*) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I;

(*2*) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(*3*) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) *Observer use of equipment.* Allowing observers to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) *Communication equipment requirements.* In the case of an operator of a catcher/processor, mothership, a catcher vessel 125 ft. LOA or longer (except for a vessel fishing for groundfish with pot gear), or a catcher vessel participating in the Rockfish Program:

(*1*) *Observer access to computer.* Making a computer available for use by the observer. This computer must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(*2*) *NMFS-supplied software.* Ensuring that the catcher/processor, mothership, or catcher vessel specified in paragraph (e)(1) of this section has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.

(*3*) *Functional and operational equipment.* Ensuring that the communication equipment required in paragraph (e)(1)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational. ''Functional'' means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (e)(1)(iii)(B)(*2*) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(iv) *Document access.* Allow observers to inspect and copy the shoreside processor's or stationary floating processor's landing report, product transfer forms, any other logbook or document required by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.

(v) *Assistance.* Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to:

(A) Assisting the observer in moving and weighing totes of fish.

(B) Providing a secure place to store sampling gear.

(3) The owner of a vessel, shoreside processor, stationary floating processor, or buying station is responsible for compliance and must ensure that the operator or manager of a vessel, shoreside processor, or stationary floating processor required to maintain observer coverage under paragraphs (a) or (b) of this section complies with the requirements given in paragraphs (e)(1) and (e)(2) of this section.

11. A new § 679.52 is added to read as follows:

§ 679.52 Observer provider permitting and responsibilities.

(a) *Observer provider permit*—(1) *Permit.* The Regional Administrator may issue a permit authorizing a person's participation as an observer provider for operations requiring full observer coverage per § 679.51(a)(2) and (b)(2). Persons seeking to provide observer services under this section must obtain an observer provider permit from NMFS.

(2) *New observer provider.* An applicant seeking an observer provider permit must submit a completed application by fax or mail to the Observer Program Office at the address listed at § 679.51(c)(3).

(3) *Contents of application.* An application for an observer provider permit shall consist of a narrative that contains the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and other employees. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) *Contact information*—(A) *Owner(s) information.* The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence.

(B) *Business information.* Current physical location, business mailing address, business telephone and fax numbers, and business email address for each office.

(C) *Authorized agent.* For an observer provider with ownership based outside the United States, identify an authorized agent and provide contact information for that agent including mailing address and phone and fax numbers where the agent can be contacted for official correspondence. An authorized agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner or employee of an observer provider. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with the process.

(iii) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, that they have no conflict of interest as described in paragraph (c) of this section.

(iv) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, describing any criminal convictions, Federal contracts they have had and the performance rating they received on the contract, and previous decertification action while working as an observer or observer provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of an observer provider as set out under paragraph (b) of this section, and the arrangements to be used.

(4) *Application evaluation.* (i) The Regional Administrator will establish an observer provider permit application review board, comprised of NMFS employees, to review and evaluate an application submitted under paragraph (a) of this section. The review board will evaluate the completeness of the application, the application's consistency with needs and objectives of the observer program, or other relevant factors. If the applicant is a corporation, the review board also will evaluate the following criteria for each owner, or owners, board members, and officers:

(A) Absence of conflict of interest as defined under paragraph (c) of this section;

(B) Absence of criminal convictions related to:

(*1*) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, or

(*2*) The commission of any other crimes of dishonesty, as defined by Alaska State law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(C) Satisfactory performance ratings on any Federal contracts held by the applicant; and

(D) Absence of any history of decertification as either an observer or observer provider;

(ii) [Reserved]

(5) *Agency determination on an application.* NMFS will send a written determination to the applicant. If an application is approved, NMFS will issue an observer provider permit to the applicant. If an application is denied, the reason for denial will be explained in the written determination.

(6) *Transferability.* An observer provider permit is not transferable. An observer provider that experiences a change in ownership that involves a new person must submit a new permit application and cannot continue to operate until a new permit is issued under this paragraph.

(7) *Expiration of observer provider permit.* (i) An observer provider permit will expire after a period of 12 continuous months during which no observers are deployed by the provider under this section to the North Pacific groundfish or halibut industry.

(ii) The Regional Administrator will provide a written initial administrative determination (IAD) of permit expiration to an observer provider if NMFS' deployment records indicate that the observer provider has not deployed an observer during a period of 12 continuous months. An observer provider who receives an IAD of permit expiration may appeal under § 679.43. An observer provider that appeals an IAD will be issued an extension of the expiration date of the permit until after the final resolution of the appeal.

(8) *Sanctions.* Procedures governing sanctions of permits are found at subpart D of 15 CFR part 904.

(b) *Responsibilities of observer providers.* An observer provider that supplies observers for operations requiring full observer coverage per § 679.51(a)(2) and (b)(2) must:

(1) *Provide qualified candidates to serve as observers.* (i) To be a qualified candidate an individual must have:

(A) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(B) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(C) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(D) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) Prior to hiring an observer candidate, the observer provider must provide to the candidate copies of NMFS-prepared pamphlets and other information describing observer duties.

(iii) For each observer employed by an observer provider, either a written contract or a written contract addendum must exist that is signed by the observer and observer provider prior to the observer's deployment and that includes the following conditions for continued employment:

(A) That all the observer's in-season catch messages between the observer and NMFS are delivered to the Observer Program Office at least every 7 days, unless otherwise specified by the Observer Program;

(B) That the observer completes in-person mid-deployment data reviews, unless:

(*1*) The observer is specifically exempted by the Observer Program, or

(*2*) The observer does not at any time during his or her deployment travel through a location where an Observer Program employee is available for an in-person data review and the observer completes a phone or fax mid-deployment data review as described in the observer manual; and

(C) The observer informs the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required in paragraph (b)(10)(iii) of this section that would prevent him or her from performing his or her assigned duties;

(2) *Ensure an observer completes duties in a timely manner.* An observer provider must ensure that an observer employed by that observer provider performs the following in a complete and timely manner:

(i) When an observer is scheduled for a final deployment debriefing under paragraph (b)(10)(v) of this section, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s);

(ii) Complete NMFS electronic vessel and/or processor surveys before performing other jobs or duties that are not part of NMFS groundfish observer requirements;

(iii) Report for his or her scheduled debriefing and complete all debriefing responsibilities; and

(iv) Return all sampling and safety gear to the Observer Program Office.

(3) *Observer conduct.* (i) An observer provider must develop, maintain, and implement a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs; and

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(ii) An observer provider shall provide a copy of its conduct and behavior policy:

(A) To observers, observer candidates; and

(B) By February 1 of each year to the Observer Program Office.

(4) *Assign observer to vessels and processors.* An observer provider must assign to vessels or shoreside or floating processors only observers:

(i) With valid North Pacific groundfish and halibut observer certifications and endorsements to provide observer services;

(ii) Who have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (b)(10)(iii) of this section that would prevent him or her from performing his or her assigned duties; and

(iii) Who have successfully completed all NMFS required training and briefing before deployment.

(5) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees, salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(6) *Provide observer deployment logistics.* (i) An observer provider must provide to each observer it employs:

(A) All necessary transportation, including arrangements and logistics, to the initial location of deployment, to all subsequent vessel and shoreside or stationary floating processor assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(B) Lodging, per diem, and any other necessary services necessary to observers assigned to fishing vessels or shoreside processing or stationary floating processing facilities.

(ii) Except as provided in paragraph (b)(6)(iii) of this section, an observer provider must provide to each observer deployed to a shoreside processing facility or stationary floating processor, and each observer between vessel, stationary floating processor, or shoreside assignments while still under contract with a an observer provider, shall be provided with accommodations at a licensed hotel, motel, bed and breakfast, stationary floating processor, or other shoreside accommodations for the duration of each shoreside assignment or period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(iii) An observer under contract may be housed on a vessel to which the observer is assigned:

(A) Prior to the vessel's initial departure from port;

(B) For a period not to exceed 24 hours following completion of an offload for which the observer has duties and is scheduled to disembark; or

(C) For a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(iv) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

(v) Each observer deployed to a shoreside processing facility must be provided with individually assigned communication equipment in working order, such as a cell phone or pager, for notification of upcoming deliveries or other necessary communication. Each observer assigned to a shoreside processing facility located more than 1 mile from the observer's local accommodations shall be provided with motorized transportation that will ensure the observer's arrival at the processing facility in a timely manner such that the observer can complete his or her assigned duties.

(7) *Limit observer deployment.* Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

(i) Deploy an observer on the same vessel or at the same shoreside or stationary floating processor for more than 90 days in a 12-month period;

(ii) Deploy an observer for more than 90 days in a single deployment;

(iii) Include in a single deployment of an observer, assignments to more than four vessels, including groundfish and all other vessels, and/or shoreside processors; or

(iv) Move an observer from a vessel or stationary floating processor or shoreside processor before that observer has completed his or her sampling or data transmission duties.

(8) *Verify vessel safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under § 679.51(e)(1)(ii)(B)(*1*) before the vessel with an observer aboard may depart. One of the following acceptable means of verification must be used to verify the decal validity:

(i) An employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(ii) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(9) *Provide 24 hours a day communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving an observer or problems concerning observer logistics, whenever an observer is at sea, stationed at a shoreside processor or stationary floating processor, in transit, or in port awaiting vessel or processor (re)assignment.

(10) *Provide information to the Observer Program Office.* An observer provider must provide all the following information to the Observer Program Office by electronic transmission (email), fax, or other method specified by NMFS within the specified timeframes.

(i) *Registration Materials.* Observer training and briefing registration materials must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer certification training or briefing session. Registration materials consist of the following:

(A) Observer training registration, including:

(*1*) Date of requested training;

(*2*) A list of observer candidates. The list must include each candidate's full name (i.e., first, middle, and last names), date of birth, and gender;

(*3*) A copy of each candidate's academic transcripts and resume; and

(*4*) A statement signed by the candidate under penalty of perjury that discloses any criminal convictions of the candidate.

(B) Observer briefing registration, including:

(*1*) Date and type of requested briefing session and briefing location; and

(*2*) List of observers to attend the briefing session. Each observer's full name (first, middle, and last names) must be included.

(ii) *Statement of projected observer assignments.* Prior to the observer or observer candidate's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that includes the observer's name; vessel, shoreside processor, or stationary floating processor assignment, gear type, and vessel/processor code; port of embarkation; target species; and area of fishing.

(iii) *Physician's Statement.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on the physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize their individual safety or the safety of others while the observer or observer candidate is deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician read the NMFS-prepared pamphlet provided to the candidate by the observer provider as specified in paragraph (b)(1)(ii) of this section and was made aware of the duties of the observer as well as the dangerous, remote, and rigorous nature of the work. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(iv) *Observer deployment/logistics report.* A deployment/logistics report must be submitted by Wednesday, 4:30 p.m., Pacific local time, of each week with regard to each observer deployed by the observer provider during that week. The deployment/logistics report must include the observer's name, cruise number, current vessel, shoreside processor, or stationary floating processor assignment and vessel/processor code, embarkation date, and estimated or actual disembarkation dates. The report must include the location of any observer employed by the observer provider who is not assigned to a vessel, shoreside processor, or stationary floating processor.

(v) *Observer debriefing registration.* The observer provider must contact the Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time, and location for debriefing. Observer debriefing registration information must be provided at the time the debriefing is scheduled and must include the observer's name, cruise number, vessel, or shoreside or stationary floating processor assignment name(s) and code(s), and requested debriefing date.

(vi) *Certificates of Insurance.* Copies of ''certificates of insurance'' that name the NMFS Observer Program leader as the ''certificate holder'' shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled and verify the following coverage provisions:

(A) Maritime Liability to cover ''seamen's'' claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum);

(B) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum);

(C) States Worker's Compensation, as required; and

(D) Commercial General Liability.

(vii) *Observer provider contracts.* Observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under § 679.51(a)(2) and (b)(2) of this part, by February 1 of each year. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. Said copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request for the contract at the address or fax number listed in § 679.51(c)(3). Signed and valid contracts include the contracts an observer provider has with:

(A) Vessels required to have observer coverage as specified at § 679.51(a)(2);

(B) Shoreside processors or stationary floating processors required to have observer coverage as specified at § 679.51(b)(2); and

(C) Observers.

(viii) *Observer provider invoices.* A certified observer provider must submit to the Observer Program Office a copy of all invoices for observer coverage required or provided pursuant to § 679.51(a)(2) and § 679.51(b)(2).

(A) A copy of the invoices must be received by the Observer Program Office within 45 days of the date on the invoice and must include all reconciled and final charges.

(B) Invoices must contain the following information:

(*1*) Name of each catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside

processing plant to which the invoice applies;

(*2*) Dates of service for each observer on each catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside processing plant. Dates billed that are not observer coverage days must be identified on the invoice;

(*3*) Rate charged in dollars per day (daily rate) for observer services;

(*4*) Total charge for observer services (number of days multiplied by daily rate);

(*5*) Amount charged for air transportation; and

(*6*) Amount charged by the provider for any other observer expenses, including but not limited to: Ground transportation, excess baggage, and lodging. Charges for these expenses must be separated and identified.

(ix) *Change in observer provider management and contact information.* Except for changes in ownership addressed under paragraph (a)(6) of this section, an observer provider must submit notification of any other change to the information submitted on the provider's permit application under paragraphs (a)(3)(i) through (iv) of this section. Within 30 days of the effective date of such change. The information must be submitted by fax or mail to the Observer Program Office at the address listed in § 679.51(c)(3). Any information submitted under (a)(3)(iii) or (a)(3)(iv) of this section will be subject to NMFS review and determinations under (a)(4) through (7) of this section.

(x) *Other reports.* Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email:

(A) Within 24 hours after the observer provider becomes aware of the following information:

(*1*) Any information regarding possible observer harassment;

(*2*) Any information regarding any action prohibited under § 679.7(g) or § 600.725(o), (t), and (u) of this chapter;

(*3*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7), or processor safety;

(*4*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*5*) Any information, allegations or reports regarding observer conflict of interest or failure to abide by the standards of behavior described in § 679.53(b)(1) through (b)(2), or;

(B) Within 72 hours after the observer provider determines that an observer violated the observer provider's conduct and behavior policy described at paragraph (b)(3)(i) of this section; these reports shall include the underlying facts and circumstances of the violation.

(11) *Replace lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(12) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(c) *Limitations on conflict of interest.* Observer providers: (1) Are authorized to provide observer services under an FMP or the Halibut Act for the waters off Alaska as required in § 679.51(a)(2) or (b)(2), or scientific data collector and observer services to support NMFS-approved scientific research activities, exempted educational activities, or exempted or experimental fishing as defined in § 600.10 of this chapter.

(2) Must not have a direct financial interest, other than the provision of observer or scientific data collector services, in a North Pacific fishery managed under an FMP or the Halibut Act for the waters off Alaska, including, but not limited to:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside processor or stationary floating processor facility involved in the catching or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, shoreside processor, or stationary floating processor participating in a fishery managed pursuant to an FMP or the Halibut Act in the waters off Alaska, or

(iii) Any business involved with purchasing raw or processed products from any vessel, shoreside processor, or stationary floating processor participating in a fishery managed pursuant to an FMP or the Halibut Act in the waters off Alaska.

(3) Must assign observers without regard to any preference by representatives of vessels, shoreside processors, or stationary floating processors other than when an observer will be deployed.

(4) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of the observer provider.

12. A new § 679.53 is added to read as follows:

§ 679.53 Observer certification and responsibilities.

(a) *Observer Certification*—(1) *Applicability.* Observer certification authorizes an individual to fulfill duties for operations requiring full observer coverage per § 679.51(a)(2) and (b)(2) as specified in writing by the NMFS Observer Program Office while under the employ of an observer provider permitted under § 679.52(a) and according to certification endorsements as designated under paragraph (a)(5) of this section.

(2) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program on whether to issue or deny observer certification.

(3) *Certification requirements.* NMFS may certify an individual who, in addition to any other relevant considerations:

(i) Is employed by a permitted observer provider company at the time of the issuance of the certification;

(ii) Has provided, through their observer provider:

(A) Information identified by NMFS at § 679.52(b)(10)(i)(A)(*3*) and (*4*) and in writing from the Observer Program; and

(B) Information identified by NMFS at § 679.52(b)(10)(iii) regarding the observer candidate's health and physical fitness for the job;

(iii) Meet all education and health standards as specified in § 679.52(b)(1)(i) and § 679.52(b)(10)(iii), respectively;

(iv) Has successfully completed a NMFS-approved training as prescribed by the Observer Program.

(A) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(B) If a candidate fails training, he or she will be orally notified of the unsatisfactory status of his or her training on or before the last day of training. Within 10 business days of the oral notification, the Observer Program will notify the observer candidate in writing. The written notification will

specify why the candidate failed the training and whether the candidate may retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of a written determination denying certification, as specified under paragraph (a)(4)(i) of this section.

(v) Have not been decertified under paragraph (c) of this section.

(4) *Agency determinations on observer certification*—(i) *Denial of certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(ii) *Issuance of an observer certification.* An observer certification will be issued upon determination by the NMFS observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (a)(3) of this section.

(5) *Endorsements.* The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy as indicated.

(i) *Certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain this endorsement. A certification training endorsement is required for any deployment as an observer in the Bering Sea and Aleutian Islands groundfish fisheries and the Gulf of Alaska groundfish fisheries or Halibut Act fisheries and will be granted with the initial issuance of an observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program for a period of time specified by the Observer Program after his or her most recent debriefing. In order to renew the endorsement, the observer must successfully retake the certification training. Observers will be notified of any changes to the endorsement expiration period prior to the effective date of the change.

(ii) *Annual general endorsement.* Each observer must obtain an annual general endorsement to their certification prior to his or her initial deployment within any calendar year subsequent to a calendar year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(iii) *Deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(iv) *Level 2 endorsements.* A certified observer may obtain a level 2 endorsement to their certification. A level 2 endorsement is required for purposes of performing observer duties aboard vessels or stationary floating processors or at shoreside processors participating in fisheries as prescribed in § 679.51(a)(2)(vi)(A) through (D). A level 2 endorsement to an observer's certification may be obtained if the observer meets the following requirements:

(A) Previously served as an observer in the groundfish or halibut fisheries off Alaska and has completed at least 60 days of observer data collection;

(B) Received an evaluation by NMFS for his or her most recent deployment that indicated the observer's performance met Observer Program expectations standards for that deployment; and

(C) Complies with all the other requirements of this section.

(v) An observer who has obtained a level 2 endorsement to his or her observer certification as specified in paragraph (a)(5)(iv) of this section may additionally receive a ''lead'' level 2 observer endorsement if the observer meets the following requirements:

(A) A ''lead'' level 2 observer on a catcher/processor using trawl gear or a mothership must have completed two observer cruises (contracts) and sampled at least 100 hauls on a catcher/processor using trawl gear or on a mothership.

(B) A ''lead'' level 2 observer on a catcher vessel using trawl gear must have completed two observer cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.

(C) A ''lead'' level 2 observer on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.

(b) *Standards of observer conduct*—(1) *Limitations on conflict of interest.* (i) An observer fulfilling duties for operations in the full observer coverage category per § 679.51(a)(2) or (b)(2):

(A) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery, including, but not limited to:

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside processor, or stationary floating processor facility involved in the catching or processing of fish,

(*2*) Any business involved with selling supplies or services to any vessel, shoreside processor, or stationary floating processor participating in a North Pacific fishery, or

(*3*) Any business involved with purchasing raw or processed products from any vessel, shoreside processor, or stationary floating processor participating in a North Pacific fishery.

(B) May not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observer's official duties.

(C) May not serve as an observer on any vessel or at any shoreside or stationary floating processing facility owned or operated by a person who previously employed the observer.

(D) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor in a North Pacific fishery while employed by an observer provider.

(ii) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(2) *Standards of Behavior.* An observer fulfilling duties for operations in the full observer coverage category per § 679.51(a)(2) or (b)(2) must:

(i) Perform assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office;

(ii) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment; and

(iii) Not disclose collected data and observations made aboard the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(c) *Suspension and Decertification*—(1) *Suspension and decertification review official.* The Regional Administrator will establish an observer suspension and decertification review official(s), who will have the authority to review observer certifications issued under paragraph (a) of this section and issue initial administrative determinations of observer certification suspension and/or decertification.

(2) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(i) When it is alleged that the observer has committed any acts or omissions of any of the following:

(A) Failed to satisfactorily perform the duties of an observer as specified in writing by the Observer Program; or

(B) Failed to abide by the standards of conduct for an observer as prescribed under paragraph (b) of this section;

(ii) Upon conviction of a crime or upon entry of a civil judgment for:

(A) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the Observer Program;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(C) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(3) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under paragraph (c)(2) of this section, the suspension/decertification official will issue a written initial administrative determination (IAD) to the observer via certified mail at the observer's most current address provided to NMFS under § 679.43(e). The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification can be made effective upon issuance of the IAD in cases of willfulness or in cases in which public health, interest, or safety require such action. In such cases, the suspension/decertification official will state in the IAD that suspension or decertification is effective at time of issuance and the reason for the action.

(4) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal pursuant to § 679.43.

13. A new § 679.54 is added to read as follows:

§ 679.54 Release of observer data to the public.

(a) *Summary of weekly data.* The following information collected by observers for each catcher/processor and catcher vessel during any weekly reporting period may be made available to the public:

(1) Vessel name and Federal permit number.

(2) Number of Chinook salmon and ''other salmon'' observed.

(3) The ratio of total round weight of incidentally caught halibut or Pacific herring to the total round weight of groundfish in sampled catch.

(4) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls.

(5) The number of observed trawl hauls or fixed gear sets.

(6) The number of trawl hauls that were basket sampled.

(7) The total weight of basket samples taken from sampled trawl hauls.

(b) *Haul-specific data.* (1) The information listed in paragraphs (b)(1)(i) through (xiii) of this section and collected by observers from observed hauls on board vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(i) Date.

(ii) Time of day gear is deployed.

(iii) Latitude and longitude at beginning of haul.

(iv) Bottom depth.

(v) Fishing depth of trawl.

(vi) The ratio of the number of Chinook salmon to the total round weight of groundfish.

(vii) The ratio of the number of other salmon to the total round weight of groundfish.

(viii) The ratio of total round weight of incidentally caught halibut to the total round weight of groundfish.

(ix) The ratio of total round weight of herring to the total round weight of groundfish.

(x) The ratio of the number of king crab to the total round weight of groundfish.

(xi) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish.

(xii) Sea surface temperature (where available).

(xiii) Sea temperature at fishing depth of trawl (where available).

(2) The identity of the vessels from which the data in paragraph (b)(1) of this section are collected will not be released.

(c) *Competitive harm.* In exceptional circumstances, the owners and operators of vessels may provide to the Regional Administrator written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (a) and (b) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

14. A new § 679.55 is added to read as follows:

§ 679.55 Observer fees.

(a) *Responsibility.* The owner of a shoreside processor or a stationary floating processor named on a Federal Processing Permit (FPP) or a person named on a Registered Buyer permit at the time of the landing subject to the observer fee as specified at § 679.55(c) must comply with the requirements of this section. Subsequent non-renewal of an FPP or a Registered Buyer permit does not affect the permit holder's liability for noncompliance with this section.

(b) *Observer fee liability determination.* After each fishing year, the Regional Administrator will mail an observer fee liability invoice to each permit holder specified in paragraph (a) of this section for landings of groundfish and halibut subject to the observer fee. The observer fee liability invoice will provide a summary of the round pounds of groundfish and headed-and-gutted weight for halibut landed during the previous fishing year for each permit by species, landing port or port-group, and gear category. The total fee liability for each permit holder will be determined by applying the observer fee percentage in paragraph (f) of this section to the ex-vessel value of the groundfish and halibut landings subject to the observer fee. The method for determining the ex-vessel value of the groundfish and halibut landings subject to the observer fee is provided in paragraph (e) of this section. The fee liability will be assessed on the groundfish round weight and the headed-and-gutted weight for halibut.

(c) *Landings subject to the observer fee.* The observer fee is assessed on landings by vessels not in the full observer coverage category described at § 679.51(a)(2) according to the following table:

If fish in the landing is from the following fishery or species:	Is fish from the landing subject to the observer fee?	
	If the vessel is not designated on an FFP or required to be designated on an FFP:	If the vessel is designated on an FFP or required to be designated on an FFP:
(1) Groundfish listed in Table 2a to this part that is harvested in the EEZ and subtracted from a total allowable catch limit specified under § 679.20(a),.	Not applicable, an FFP is required to harvest these groundfish in the EEZ.	Yes.
(2) Groundfish listed in Table 2a to this part that is harvested in Alaska State waters, including in a parallel groundfish fishery, and subtracted from a total allowable catch limit specified under § 679.20(a).	No	Yes.
(3) Sablefish IFQ, regardless of where harvested	Yes	Yes.
(4) Halibut IFQ or halibut CDQ, regardless of where harvested	Yes	Yes.
(5) Groundfish listed in Table 2a to this part that is harvested in Alaska State waters, but is not subtracted from a total allowable catch limit under § 679.20(a)..	No	No.
(6) Any groundfish or other species not listed in Table 2a to part 679, except halibut IFQ or CDQ halibut, regardless of where harvested..	No	No.

(d) *Standard ex-vessel prices*—(1) *General.* NMFS will publish the standard ex-vessel prices used to determine the observer fee in the upcoming year in the **Federal Register** during the last quarter of each calendar year. The standard ex-vessel prices will be described in U.S. dollars per equivalent round pound for groundfish and per equivalent headed-and-gutted weight for halibut.

(2) *Effective duration.* The standard ex-vessel prices will remain in effect until revised by subsequent publication in the **Federal Register**.

(3) *Standard ex-vessel price determination and use*—(i) *Groundfish standard ex-vessel prices.* Except as described in paragraph (d)(3)(ii) of this section, NMFS will calculate groundfish standard ex-vessel prices based on standardized ex-vessel nominal prices calculated using information submitted in the Commercial Operator's Annual Report described at § 679.5(p) and the shoreside processor or stationary floating processor landing report described at § 679.5(e)(5), as well as methods established by the State of Alaska's Commercial Fisheries Entry Commission.

(A) Groundfish standard ex-vessel prices will be calculated as a 3-year rolling average of standard prices for each species, port or port-group, and gear.

(B) Gear categories for groundfish standard ex-vessel prices are: pelagic trawl gear, non-pelagic trawl gear, and non-trawl gear.

(ii) *Halibut and fixed gear sablefish standard ex-vessel prices.* NMFS will use data submitted to NMFS on the IFQ Registered Buyer report under § 679.5(l)(7) to calculate the standard ex-vessel prices for each year for halibut and fixed gear sablefish, by port or port group. These standard ex-vessel prices will be applied to landings of:

(A) Halibut;

(B) IFQ sablefish, and;

(C) Sablefish accruing against the fixed-gear sablefish CDQ allocation.

(iii) *Confidentiality.* Standard ex-vessel prices will be aggregated among ports if fewer than four processors participate in a price category for any species and gear combination.

(e) *Determining the ex-vessel value of groundfish and halibut.* The ex-vessel value of groundfish and halibut subject to the observer fee will be determined by applying the standard ex-vessel price published in the **Federal Register** in the year prior to the year in which the landing was made to the round weight of groundfish and the headed-and-gutted weight of halibut landings subject to the observer fee.

(f) *Observer fee percentage.* The observer fee percentage is 1.25 percent.

(g) *Fee collection.* A permit holder specified in paragraph (a) of this section, receiving a groundfish or halibut landing subject to the observer fee under paragraph (c) of this section, is responsible for collecting fees during the calendar year in which the groundfish or halibut is received.

(h) *Payment*—(1) *Payment due date.* A permit holder specified in paragraph (a) of this section must submit his or her observer fee liability payment(s) to NMFS no later than February 15 of the year following the calendar year in which the groundfish or halibut landings subject to the observer fee were made.

(2) *Payment recipient.* Make electronic payment payable to NMFS.

(3) *Payment address.* Payments must be made electronically through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Instructions for electronic payment will be provided on the payment Web site and on the observer fee liability invoice to be mailed to each permit holder.

(4) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearinghouse, credit card, or electronic check drawn on a U.S. bank account.

(5) *Underpayment of fee liability.* (i) Under § 679.4, an applicant will not receive a new or amended FPP or Registered Buyer permit until he or she submits a complete permit application. For the application to be considered complete, all fees required by NMFS must be paid.

(ii) If a permit holder fails to submit full payment for the observer fee liability by the date described in paragraph (h)(1) of this section, the Regional Administrator may:

(A) At any time thereafter send an initial administrative determination to the liable permit holder stating that the permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the permit holder pursuant to paragraph (b) of this section, is the amount of observer fee due from the permit holder.

(B) Disapprove any issuance of an FPP or Registered Buyer permit to the applicant in accordance with § 679.4.

(iii) If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(i) *Overpayment of fee.* Upon issuance of final agency action, any amount submitted to NMFS in excess of the observer fee liability determined to be due by the final agency action will be returned to the permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future observer fee liability.

(j) *Appeals.* A permit holder who receives an IAD may either pay the fee liability or appeal the IAD pursuant to § 679.43. In any appeal of an IAD made under this section, a permit holder

specified in paragraph (a) of this section has the burden of proving his or her claim.

[FR Doc. 2012–8856 Filed 4–12–12; 4:15 pm]

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FEDERAL REGISTER

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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2012–0080, Sequence 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–58; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–58. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–58 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–58

Item	Subject	FAR case	Analyst
I	Biobased Procurements	2010–004	Clark.
II	Representation Regarding Export of Sensitive Technology to Iran	2010–018	Davis.
III	Justification and Approval of Sole-Source 8(a) Contracts	2009–038	Morgan.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–58 amends the FAR as specified below:

Item I—Biobased Procurements (FAR Case 2010–004)

This final rule amends the FAR to implement changes that require contractors to report the biobased products purchased under service and construction contracts. The Farm Security and Rural Investment Act (7 U.S.C. 8102) requires agencies to report this information to the Office of Federal Procurement Policy. This reporting will enable agencies to monitor compliance with the Federal preference for purchasing biobased products. Contractors may need to create an inventory management system to track the biobased products purchased for each contract. However, this rule may enhance small business biobased product suppliers' participation in this market.

Item II—Representation Regarding Export of Sensitive Technology to Iran (FAR Case 2010–018)

This final rule adopts, with minor changes, an interim rule which added a representation to implement section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. This rule has no significant impact on small business concerns.

Item III—Justification and Approval of Sole-Source 8(a) Contracts (FAR Case 2009–038)

This rule adopts as final, without change, an interim rule published in the **Federal Register** at 76 FR 14559 on March 16, 2011, which implemented section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). Section 811 prohibits the award of a sole-source contract in an amount over $20 million under the 8(a) program authority (15 U.S.C. 637(a)) without first obtaining a written Justification and Approval (J&A) approved by an appropriate official, and making public the J&A and related information. This internal Government requirement for the development and approval of a sole-source J&A for 8(a) sole-source awards over $20 million neither prohibits such awards nor increases the qualifications required of 8(a) firms.

Item IV—Technical Amendments

Editorial changes are made at FAR 1.201–1, 52.212–5, and 52.219–28.

Dated: April 11, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Federal Acquisition Circular (FAC) 2005–58 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–58 is effective April 18, 2012, except for Items I and II which are effective May 18, 2012.

Dated: April 10, 2012.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: April 5, 2012.

Joseph A. Neurauter,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: April 11, 2012.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2012–9200 Filed 4–17–12; 8:45 a.m.]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 11, 23, and 52

[FAC 2005–58; FAR Case 2010–004; Item I; Docket 2010–0004, Sequence 2]

RIN 9000–AM03

Federal Acquisition Regulation; Biobased Procurements

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement changes due to the Farm Security and Rural Investment Act that require contractors to report the biobased products purchased under service and construction contracts. This reporting will enable agencies to monitor compliance with the Federal preference for purchasing biobased products.

DATES: *Effective Date:* May 18, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at 202–219–1813, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–58, FAR Case 2010–004.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 41179 on July 13, 2011, to implement section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). These statutory provisions are codified at 7 U.S.C. 8102. This section of the United States Code requires Federal agencies to establish a procurement program, develop procurement specifications, procure biobased products, and give preference to those items that are composed of the highest percentage of biobased products practicable or those products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1). Title 7 U.S.C. 8102 provides Federal agencies the flexibility not to procure biobased products if the product cannot be acquired—

(a) Within a reasonable time frame providing for compliance with the contract performance schedule;

(b) Meeting reasonable performance requirements; or

(c) At a reasonable price.

The Biobased Products Preference Program was originally implemented in FAR Case 2004–032, which was published in the **Federal Register** at 72 FR 63040, November 7, 2007. This final rule implements additional elements of 7 U.S.C. 8102 as amended by Public Law 110–246. This final rule also meets the direction in the Presidential Memorandum, ''Driving Innovation and Creating Jobs in Rural America through Biobased and Sustainable Product Procurement,'' dated February 21, 2012, to amend the FAR to require reporting of biobased product purchases. Two respondents submitted 14 public comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Changes to the FAR

1. The definition of ''biobased product'' is revised at FAR 2.101.

2. A prohibition against agencies collecting more data than typically would be provided by other entities (other than data confirming the biobased content) was added to FAR 11.302.

3. The clause at FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, is amended to require annual reporting by the contractor of the types and dollar value of any U.S. Department of Agriculture (USDA)-designated biobased products purchased during the preceding fiscal year on the contract.

4. References to the USDA's BioPreferred Program are updated to conform to the agency's relocation of the program's rules in the Code of Federal Regulations (see 76 FR 53631 dated August 29, 2011).

5. USDA established a blanket exemption for all USDA-designated biobased items from the Biopreferred Program's requirements for procurements involving combat or combat-related missions and for spacecraft systems and launch support equipment (see 73 FR 27953 dated May 14, 2008). FAR 23.404(b)(2) and 52.223–2(a)(2) are updated to conform to the blanket exemption.

B. Positive Comments

Comments: Both respondents stated their strong support for the proposed rule. One respondent viewed it ''as a necessary action to implement existing laws and policies for purchasing biobased products by federal agencies and contractors.''

Response: Noted.

Comments: One respondent expressed particular support for the provision in the proposed rule directing contracting officers to refer to the USDA list of designated biobased items. Both respondents agreed that the USDA list is an important and growing reminder of the availability of biobased products.

Response: Noted. However, the preference for use of biobased products that are USDA-designated items existed at FAR 52.223–2(a) prior to the proposed rule.

Comments: Both respondents expressed support for the requirement that contractors report annually on the biobased products purchased and their dollar value. One respondent stated that such annual reports, by contractors and agencies, will help measure the growth and success of the program and ensure agency and contractor compliance with the law.

Response: Noted. Also see section C below regarding reporting and section V for a comment on the reporting burden associated with this rule.

C. Definitions

Comment: One respondent noted that neither ''cognizant environmental manager'' nor ''agency environmental manager'' was defined in the proposed rule. The respondent suggested that more clarity was needed, and the ''person to whom the product type and dollar value data are reported should be someone who can ensure that the data are properly collected and tabulated and made available for reporting into the Federal Procurement Data System or other system that will allow each agency to report the information to the Office of Federal Procurement Policy, as required.''

Response: The clause at FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, has been revised at paragraphs (c) and (d) to eliminate any reference to the environmental manager and change the reporting requirement to the environmental point of contact, with a copy of the report to be sent to the contracting officer. Together, these

revisions eliminate any need for additional definitions in the FAR coverage.

D. Allow No Exceptions or Waivers

Comment: Strongly supporting the program's requirement that all Federal agencies and contractors purchase USDA-designated biobased products, one respondent recommended that no exemptions or waivers should be allowed under any circumstances.

Response: Exemptions or waivers, under certain circumstances, to the acquisition of USDA-designated biobased products are recognized by the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 8102, and Executive Order 13514, entitled ''Federal Leadership in Environmental, Energy, and Economic Performance,'' dated October 5, 2009. These exemptions or exceptions previously have been implemented in the FAR.

E. Out-of-Scope Comments

Comments: One respondent presented recommendations for the elements on which the Office of Management and Budget (OMB) should report annually in order to ensure compliance. These recommendations included mandatory reporting elements for each agency, department, and its contractors. The respondent asserted that there should be additional reporting required by DoD. The second respondent noted that section 9002(a)(4)(B) of the statute provides specific annual reporting requirements for the GSA and Defense Logistics Agency and queried why those agency reporting requirements were not addressed in the proposed rule.

Response: The FAR addresses requirements for contractors. OMB is responsible for determining agency reporting requirements. Therefore, these comments are outside the scope of this rule.

Comment: One respondent recommended that, in order to ensure full compliance, DoD should seek to update 100 percent of its specifications to include biobased products by December 31, 2013.

Response: The internal review of specifications by a particular agency is outside the scope of this rule.

Comment: One respondent recommended that a complete inventory management system needed to be created to track the biobased products purchased by all Federal agencies. The respondent stated that ''(t)his scorecard should contain information on agencies and departments purchasing biobased products and contracts.'' According to the respondent, codifying the biobased products acquisition reporting structure in the FAR would lead to more market pull.

Response: The FAR addresses requirements for contractors. OMB is responsible for determining agency management and reporting requirements. Therefore, this recommendation is outside the scope of this rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, General Services Administration, and National Aeronautics and Space Administration have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement section 9002 of the Farm Security and Rural Investment Act of 2002, codified at 7 U.S.C. 8102, as amended by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

Title 7 U.S.C. 8102 requires Federal agencies to establish a procurement program, develop procurement specifications, procure biobased products, and give preference to those items that are composed of the highest percentage of biobased products practicable or products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1).

This final rule modifies FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, to require prime contractors to report the product types and dollar value of any USDA-designated biobased products purchased during the preceding fiscal year. The information reported by prime contractors will enable Federal agencies to (a) report annually to the Office of Federal Procurement Policy (OFPP) information concerning actions taken to implement the preference for biobased products and (b) assess compliance and measure progress in carrying out the preference for biobased products. Further, OFPP must collect the information reported by the agencies and make it publicly available on an annual basis.

There were no public comments filed in response to the Initial Regulatory Flexibility Analysis.

The rule promotes the use of biobased products and requires an annual report on the product types and dollar value of any U.S. Department of Agriculture (USDA)-designated biobased products purchased by the prime contractor during the previous year. By averaging data from Fiscal Years 2009 and 2010 in the Federal Procurement Data System (FPDS), we estimate that 48,376 contractors will be affected. Of those entities, approximately 35,927 (70 percent) will be small businesses. This estimate is based on contract actions from the following selected Product Services Codes (PSCs):

- A—Research and Development;
- F—Natural Resources Management;
- J—Maintenance, Repair, and Rebuilding of Equipment;
- M—Operation of Government-Owned Facility;
- S—Utilities and Housekeeping Services;
- T—Photographic, Mapping, Printing, and Publication Services;
- Y—Construction of Structures and Facilities; and
- Z—Maintenance, Repair or Alteration of Real Property.

We believe the clause will apply to most of the contract actions in the selected PSCs. Based on the Fiscal Year 2009 FPDS data collected, there were 55,174 unique Data Universal Numbering System (DUNS) numbers performing such contracts, and 40,741 of these were small businesses. Based on the Fiscal Year 2010 FPDS data collected, there were 41,578 unique DUNS numbers, and 31,113 of these were small businesses.

Where information on the biobased nature of products is not already available, contractors may need to create an inventory management system to track the product types and dollar value of USDA-designated biobased products purchased for each contract. However, DoD, GSA, and NASA expect that the impact will be minimal because the existing clause already requires contractors to make maximum use of biobased products in the performance of services and construction contracts, and the change does not impose any substantial new requirements other than the prime contractor reports. Small businesses are active suppliers of biobased products, and this rule may serve to enhance their participation in this market.

The types of skills required to prepare the report include data gathering, research, quantitative, editing, and drafting. We estimate the personnel required would be equivalent to a Government employee at a GS–11, step 5 salary.

There are no other reporting, recordkeeping, or other compliance requirements associated with this rule. There is no impact, positive or negative, on small businesses. Thus, there are no professional skills necessary on the part of small businesses. There are no direct costs to small business firms to comply with this rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD,

GSA, and NASA were not able to identify any significant alternatives that would accomplish the objectives of the statute. Further, the impact of this rule on small entities is expected to be generally positive.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 9000–0180, titled ''Biobased Procurements.''

One comment was received on the paperwork burden associated with this rule. It is summarized below.

Comment: The respondent believed that the required reporting does not have to be burdensome, because the clause at FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, already provides that the contractor shall make maximum use of USDA-designated biobased products (with certain exceptions). The respondent noted that, in order to comply with this current requirement, contractors should already be keeping records. Adding the dollar value of those items and reporting annually should not add a significant burden, according to the respondent. The respondent suggested that agencies should further simplify the reporting burden by making available an electronic template for the required report.

Response: The FAR does not designate practices to be used internally by Government agencies. Although providing an electronic reporting template for use by contractors seems to be a good idea, the FAR is not the proper vehicle for its designation.

List of Subjects in 48 CFR Parts 1, 2, 11, 23, and 52

Government procurement.

Dated: April 11, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 11, 23, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 11, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISTION REGULATION SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory text, by adding in sequence, FAR segment ''52.223–2'' and its corresponding OMB Control Number ''9000–0180''.

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 3. Amend section 2.101 in paragraph (b)(2), in the definition ''Biobased product'' by removing ''(including plant, animal, and marine materials) or'' and adding ''and'' in its place.

PART 11—DESCRIBING AGENCY NEEDS

■ 4. Amend section 11.302 by revising paragraph (c)(2) to read as follows:

11.302 Policy.

* * * * *

(c) * * *

(2) For biobased products, agencies may not require, as a condition of purchase of such products, the vendor or manufacturer to provide more data than would typically be provided by other business entities offering products for sale to the agency, other than data confirming the biobased content of a product (see 7 CFR 3201.8).

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.401 [Amended]

■ 5. Amend section 23.401 by removing from paragraph (b)(1) ''part 2902'' and adding ''part 3201'' in its place.

■ 6. Amend section 23.404 by revising the introductory text of paragraph (b)(2); and removing from paragraph (e)(1) ''(including plant, animal, and marine materials)''. The revised text reads as follows:

23.404 Agency affirmative procurement programs.

* * * * *

(b) * * *

(2) EPA and USDA may provide categorical exemptions for items that they designate, when procured for a specific purpose. For example, all USDA-designated items (see 7 CFR 3201.3(e)) are exempt from the preferred procurement requirement for the following:

* * * * *

■ 7. Amend section 23.405 by removing from paragraph (a)(2) ''*http://www.usda.gov/biopreferred*'' and adding ''*http://www.biopreferred.gov*'' in its place; and adding paragraph (a)(3) to read as follows:

23.405 Procedures.

(a) * * *

(3) When acquiring recovered material or biobased products, the contracting officer may request information or data on such products, including recycled or biobased content or related standards of the products (see 11.302(c)).

* * * * *

23.406 [Amended]

■ 8. Amend section 23.406 by removing from paragraph (b) ''contracts unless'' and adding ''contracts, unless'' in its place; and removing ''*http://www.usda.gov/biopreferred* or 7 CFR Part 2902'' and adding ''*http://www.biopreferred.gov* or 7 CFR part 3201'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.223–1 [Amended]

■ 9. Amend section 52.223–1 by removing ''(Dec 2007)'' and adding ''(May 2012)'' in its place; and removing ''part 2902'' and adding ''part 3201'' in its place.

■ 10. Amend section 52.223–2 by:

■ a. Revising the date of the clause;

■ b. Revising paragraph (a)(2) introductory text; and

■ c. Adding paragraphs (c) and (d).

The revised and added text reads as follows:

52.223–2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

* * * * *

Affirmative Procurement of Biobased Products Under Service and Construction Contracts (May 2012)

* * * * *

(a) * * *

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

* * * * *

(c) In the performance of this contract, the Contractor shall—

(1) Report to the environmental point of contact identified in paragraph (d) of this clause, with a copy to the Contracting

Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30;

(2) Submit this report no later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance; and

(3) Contact the environmental point of contract to obtain the preferred submittal format, if that format is not specified in this contract.

(d) The environmental point of contact for this contract is: _____ [*Contracting Officer shall insert full name, phone number, and email address. In addition, the Contracting Officer may include the agency Web site for reporting.*]

* * * * *

[FR Doc. 2012–9201 Filed 4–17–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 25, and 52

[FAC 2005–58; FAR Case 2010–018; Item II; Docket 2010–0018, Sequence 1]

RIN 9000–AL91

Federal Acquisition Regulation; Representation Regarding Export of Sensitive Technology to Iran

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to add a representation to implement section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran.

DATES: *Effective Date:* May 18, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia Davis, Procurement Analyst, at 202–219–0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–58, FAR Case 2010–018.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 76 FR 68028 on November 2, 2011, to add a representation to implement section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. One respondent submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comment in the development of the final rule. There were no significant changes in the final rule as a result of the one public comment.

Comment: The respondent pointed out that the introductory text at FAR 25.703–1, Definitions, should refer to definitions used in the ''section'' rather than ''subpart.''

Response: The correction has been made.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule will only have an impact on an offeror that is exporting sensitive technology to Iran. Domestic entities are generally prohibited from engaging in activity that would cause them to be subject to the procurement bans described in this rule due to current restrictions on trade with Iran (see, *e.g.,* Department of the Treasury Office of Foreign Assets Control regulations at 31 CFR part 560).

For the definition of ''small business,'' the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: ''(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.''

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 4, 25, and 52

Government procurement.

Dated: April 11, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Interim Rule Adopted as Final With Changes

■ Accordingly, the interim rule amending 48 CFR parts 4, 25, and 52, which was published in the **Federal Register** at 76 FR 68028, November 2, 2011, is adopted as final with the following changes:

PART 25—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 25.703–1 by revising the introductory text to read as follows:

25.703–1 Definitions.

As used in this section—

* * * * *

[FR Doc. 2012–9202 Filed 4–17–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 15, and 19

[FAC 2005–58; FAR Case 2009–038; Item III; Docket 2010–0095, Sequence 1]

RIN 9000–AL55

Federal Acquisition Regulation; Justification and Approval of Sole-Source 8(a) Contracts

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are adopting as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2010. This section requires the head of an agency to execute and make public prior to award, the justification for an 8(a) sole-source contract in an amount exceeding $20 million.

DATES: *Effective Date:* April 18, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at 202–501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–58, FAR Case 2009–038.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 76 FR 14559 on March 16, 2011, to implement section 811 of the National Defense Authorization Act for Fiscal Year 2010 (NDAA for FY 2010) (Pub. L. 111–84). Section 811 prohibits the award of a sole-source contract in an amount over $20 million under the 8(a) Business Development Program authority (15 U.S.C. 637(a)) without first obtaining a written Justification and Approval (J&A) approved by an appropriate official and making public the J&A and related information. Section 811 does not institute any requirement for J&As for sole-source 8(a) contracts less than or equal to $20 million. Nine respondents submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Significant Changes

There were no changes made to the FAR as a result of the public comments received.

B. Analysis of Public Comments

1. General Support for the Rule as Written

Comment: A majority of the respondents were supportive of the rule as written and recommended there be no substantial changes to the interim rule.

Response: The Councils acknowledge receipt of these comments in support of the rule.

2. Statutory Basis for the Rule

Comment: A number of respondents commented that there is no statutory basis for the new language at FAR 19.808–1(a), which states that the Small Business Administration (SBA) may not accept a sole-source 8(a) contract in excess of $20 million for negotiation, unless the requesting agency has completed a J&A in accordance with FAR 6.303. The respondents recommended amending this language in the final rule to clarify that the J&A is only required to be developed and executed prior to award and after coordinating and negotiating with the SBA (or the 8(a) participant where SBA has delegated its authority to the procuring agency).

Response: The law stipulates that the head of the agency may not award a sole-source contract that exceeds $20 million under the 8(a) program unless the contracting officer justifies the use of a sole-source contract in writing and the justification is approved by the appropriate official. However, the law does not specify the precise stage in the contract award process when the J&A must be executed. The language that was added to FAR 19.808–1 ensures that the J&A is executed prior to contract negotiation, a critical juncture in the contract award continuum. Contract negotiation, with rare exception, occurs before the contract is awarded; therefore there is no conflict with the law.

Execution of the J&A prior to the SBA's initiation of contract negotiations adheres to the established procedures in the FAR that require (1) at FAR 6.303–1, the contracting officer to justify the use of a sole-source contract in writing prior to negotiations; and (2) at FAR 19.804–2, the agency, if appropriate, to request in its offering letter to the SBA, that a requirement with a contract value over the applicable competitive threshold be awarded as a sole-source contract under the 8(a) program. The language that was added at FAR 19.808–1 does not pre-empt the obligation of agencies to cooperate with the SBA in determining the extent to which a requirement should be offered in support of the 8(a) program, nor does it impact SBA's acceptance of the requirement into the 8(a) program. It does not affect the timing of SBA's eligibility determination.

3. Including the Value of Options in Contract Value

Comment: Several respondents recommended that the $20 million threshold be applicable to the base year only, rather than including options in the total contract value.

Response: The standard contract action valuation practice is outlined in FAR 1.108(c), which provides that the final anticipated dollar value of an action include the dollar value of all options. Section 811 does not provide a basis to diverge from this standard.

4. Cross Reference at FAR 6.204(b)

Comment: One respondent recommended striking the parenthetical text at FAR 6.204(b), which references the requirements for a separate justification to support the use of 8(a) sole-source awards in FAR subpart 6.3, because it was unnecessary and potentially confusing.

Response: The Councils considered the comment, but find that the cross reference adds clarity to the FAR text.

5. Content of Justification

Comment: A number of respondents recommended that the language at FAR 6.303–2(d)(5) be amended in the final rule to clarify the other matters the head of the agency should consider when justifying and approving the award of a sole-source 8(a) contract in excess of $20 million. These considerations should include Native American economic development and meeting agency small business goals.

Response: FAR 6.303–2(d)(5), as currently written, requires agency heads to address ''Such other matters as the head of the agency concerned shall specify for purposes of this section.'' This gives agency heads the discretion to consider Native American economic development and meeting agency small business goals, as well as other relevant

matters when justifying and approving the award of a sole-source 8(a) contract.

6. Potential Impact on Native American-Owned Firms

Comment: Several respondents expressed concern regarding the possible impact facing Native American-owned enterprises. The respondents pointed out that the 8(a) program has undergone considerable reform over the last two years and has experienced overwhelming success in achieving its goals. The respondents also emphasized that the vast majority of Native American-owned enterprises have consistently provided high value support to their Government customers. In view of these considerations, the respondents requested that each executive agency send a policy directive to their contracting officers to outline the benefits of the SBA 8(a) program and the positive impact this program has had for Native participants.

Response: The benefits of SBA's 8(a) program and the positive impact this program has had for Native participants are promoted by SBA and the Office of Small and Disadvantaged Business Utilization (OSDBU) on a consistent basis throughout the Government. Each Federal agency with contracting authority has established an OSDBU. The OSDBU advocates for small, small disadvantaged (including the 8(a) program), veteran, service-disabled veteran-owned, HUBZone, and women-owned businesses. The OSDBU is charged with promoting increased access for small businesses to procurement opportunities, conducting outreach efforts, and providing liaison support for small and disadvantaged businesses. In addition, the OSDBU works closely with program officers and contracting officers to assist in the accomplishment of the annual Governmentwide 5 percent procurement goals for small disadvantaged businesses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any additional requirements on the majority of small businesses. The rule implements the statutory requirements mandated by section 811, Justification and Approval of Sole-Source Contracts, of the National Defense Authorization Act for Fiscal Year 2010. It is recognized that a very small number of businesses that have been awarded 8(a) contracts over the $20 million threshold may be impacted. However, the rule does not limit the number of contracts or dollars awarded to these businesses. The rule may also indirectly benefit the 8,833 currently certified section 8(a) firms by improving their likelihood of a contract award through increased competition, but this impact is similarly considered not significant.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 6, 15, and 19

Government procurement.

Dated: April 11, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 6, 15, and 19, which was published in the **Federal Register** at 76 FR 14559 on March 16, 2011, is adopted as a final rule without change.

[FR Doc. 2012–9204 Filed 4–17–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1 and 52

[FAC 2005–58; Item IV; Docket 2012–0079; Sequence 2]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective Date:* April 18, 2012.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1275 First Street NE., 7th Floor, Washington, DC 20417, 202–501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–58, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 1 and 52, this document makes editorial changes to the FAR.

List of Subjects in 48 CFR Parts 1 and 52

Government procurement.

Dated: April 11, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Amend section 1.201–1 by revising paragraph (c) to read as follows:

1.201–1 The two councils.

* * * * *

(c) The Director of the DAR Council shall be the representative of the Secretary of Defense. The operation of the DAR Council will be as prescribed by the Secretary of Defense.

Membership shall include representatives of the military departments, the Defense Logistics Agency, the Defense Contract Management Agency, and the National Aeronautics and Space Administration.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 2. Amend section 52.212–5 by removing from paragraph (b)(7) ''(Jan 2012)'' and adding ''(Feb 2012)'' in its place; and removing from paragraph (b)(23) ''(Apr 2009)'' and adding ''(Apr 2012)'' in its place.

■ 3. Amend section 52.219–28 by revising the date of the clause, and removing from paragraph (c) ''*http://www.sba.gov/services/contractingopportunities/sizestandardstopics/*'' and adding ''*http://www.sba.gov/content/table-small-business-size-standards*'' in its place.

The revised text reads as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

* * * * *

Post-Award Small Business Program Rerepresentation (Apr 2012)

* * * * *

[FR Doc. 2012–9206 Filed 4–17–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2012–0081, Sequence 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–58; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–58, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–58, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: April 18, 2012.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–58 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–58

Item	Subject	FAR case	Analyst
I*	Biobased Procurements	2010–004	Clark.
II	Representation Regarding Export of Sensitive Technology to Iran	2010–018	Davis.
III	Justification and Approval of Sole-Source 8(a) Contracts	2009–038	Morgan.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–58 amends the FAR as specified below:

Item I—Biobased Procurements (FAR Case 2010–004)

This final rule amends the FAR to implement changes that require contractors to report the biobased products purchased under service and construction contracts. The Farm Security and Rural Investment Act (7 U.S.C. 8102) requires agencies to report this information to the Office of Federal Procurement Policy. This reporting will enable agencies to monitor compliance with the Federal preference for purchasing biobased products. Contractors may need to create an inventory management system to track the biobased products purchased for each contract. However, this rule may enhance small business biobased product suppliers' participation in this market.

Item II—Representation Regarding Export of Sensitive Technology to Iran (FAR Case 2010–018)

This final rule adopts, with minor changes, an interim rule which added a representation to implement section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. This rule has no significant impact on small business concerns.

Item III—Justification and Approval of Sole-Source 8(a) Contracts (FAR Case 2009–038)

This rule adopts as final, without change, an interim rule published in the **Federal Register** at 76 FR 14559 on March 16, 2011, which implemented section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). Section 811 prohibits the award of a sole-source contract in an amount over $20 million under the 8(a) program authority (15 U.S.C. 637(a)) without first obtaining a written Justification and Approval (J&A) approved by an appropriate official, and making public the J&A and related information. This internal Government requirement for the development and approval of a sole-source J&A for 8(a) sole-source awards over $20 million neither prohibits such awards nor increases the qualifications required of 8(a) firms.

Item IV—Technical Amendments

Editorial changes are made at FAR 1.201–1, 52.212–5, and 52.219–28.

Dated: April 11, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–9215 Filed 4–17–12; 8:45 am]

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